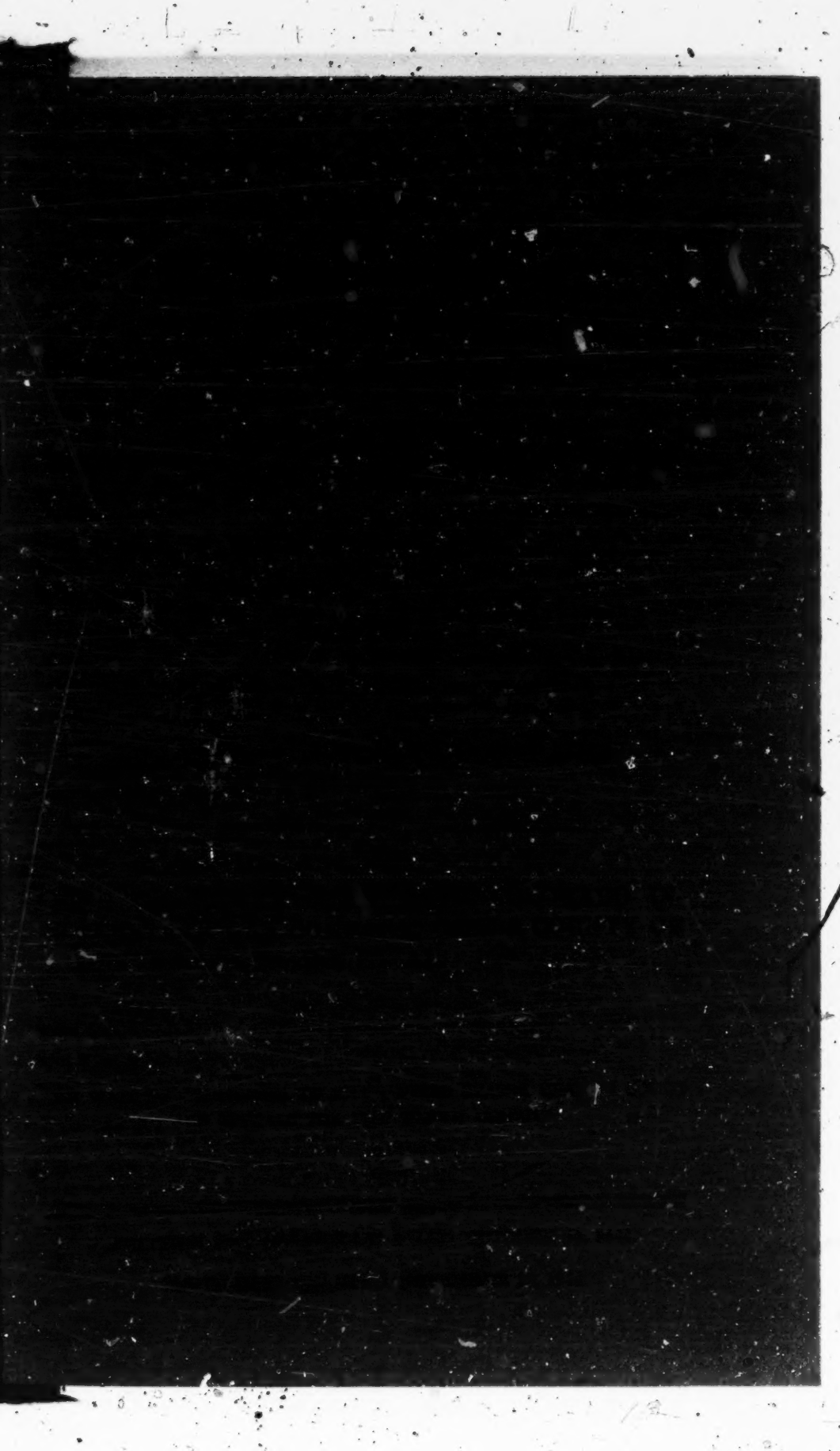

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

No. 2561.

COLORADO-WYOMING GAS COMPANY, a corporation, PETITIONER,

vs.

FEDERAL POWER COMMISSION, COLORADO INTERSTATE GAS COMPANY a corporation; CITY & COUNTY OF DENVER, COLORADO; PUBLIC SERVICE COMMISSION OF WYOMING; PUBLIC SERVICE COMPANY OF COLORADO; and CANADIAN RIVER GAS COMPANY, RESPONDENTS.

Petition of Colorado-Wyoming Gas Company for Review of Rate Order of The Federal Power Commission.

Colorado-Wyoming Gas Company, a corporation, hereinafter called "petitioner," feeling itself aggrieved by the final Order of the Federal Power Commission, of date March 18, 1942, entered in those certain causes bearing Docket Nos. G-118, G-121 and G-124 (consolidated for hearing) then pending before said Commission, respectfully petitions this Honorable Court to review and set aside said Order, and in support of its petition respectfully represents and shows:

I.

Petitioner is a private corporation organized and existing under the laws of the State of Delaware and authorized to do business in the States of Colorado and Wyoming. It owns and operates a natural gas transmission pipeline, extending from a point near Littleton, Colorado, (where it connects with the main transmission natural gas pipeline of Colorado Interstate Gas Company, extending from Clay-

ton Junction, New Mexico, to a point near the City of Denver) in a northerly direction and terminating at the "city gate" of Cheyenne, Wyoming, a distance of approximately one hundred fourteen (114) miles. It maintains its principal office and place of business at Denver, Colorado.

II.

Respondent Federal Power Commission, hereinafter called "Commission," is an administrative and regulatory body created by statute, derives its authority and jurisdiction herein under an Act of Congress known as the Natural Gas Act (15 U.S.C.A. 717, et seq.), and has its principal office and place of business in the City of Washington, District of Columbia.

III.

On December 22, 1938, respondent City and County of Denver, Colorado, a municipal corporation, filed a complaint with the Commission against respondents Colorado-Wyoming Gas Company, a corporation, Canadian River Gas Company, a corporation, and Public Service Company of Colorado, a corporation, asking the Commission to investigate and determine the reasonable cost and charge for gas used in the City and County of Denver, and alleging that the contract price for the gas sold by Colorado Interstate Gas Company to Public Service Company of Colorado, at the Denver "city gate," was unjust, unreasonable and discriminatory, and praying that said contract price be abrogated, and that the Commission fix in lieu thereof reasonable rates. This case appears on the Commission's docket at No. G-118.

On or about January 9, 1939, respondent Public Service Commission of Wyoming, a commission created by the statutes of the State of Wyoming, filed its complaint with the Commission, which complaint was docketed as No. G-121, wherein it complained against the rates and charges made and collected by this petitioner from Cheyenne Light, Fuel & Power Company, at the "city gate," Cheyenne, Wyoming.

Your petitioner purchases gas from Colorado Interstate Gas Company and sells a portion thereof to Cheyenne Light, Fuel & Power Company, for resale to domestic, commercial and industrial consumers in Cheyenne, Wyoming.

On or about the 14th day of March, 1939, the Commission instituted, upon its own motion, an investigation of and concerning all rates, charges, classifications, rules, regulations, practices and contracts of this petitioner and of Colorado Interstate Gas Company, and of Canadian River Gas Company, which cause is entered upon the docket as No. G-124.

Thereafter, and on or about the 13th day of September, 1940, the Commission entered its order consolidating for hearing said causes, to-wit: Docket Nos. G-118, G-121 and G-124, and set the hearing therein for October 28, 1940.

Thereafter, said hearings in said causes so consolidated were held before a trial examiner appointed by the Commission; continued from the 28th day of October, 1940, to the 21st day of April, 1941; and occupied 102 hearing days. The transcript of the testimony consists of more than 15,000 pages and the exhibits number substantially more than 300.

IV.

As of March 18, 1942, the Commission made and entered its final rate orders in said causes, therein requiring that the rates and charges made by this petitioner for the distribution and sale of natural gas for resale in intrastate and interstate commerce, under its rate schedules F.P.C. Nos. 1 to 5, inclusive, be reduced by not less than $119,000.00 per year; and, further, requiring substantial reductions in such rates to be charged by respondents, Canadian River Gas Company and Colorado Interstate Gas Company, to this petitioner.

By said order, served on this petitioner March 26, 1942, this petitioner was required, on or before May 25, 1942, to file with the Commission new schedules of rates and charges for or in connection with the transportation and sale of natural gas in intrastate and interstate commerce for resale, to reflect the reductions ordered, of $119,000.00 per year.

By said Opinion and Order of the Commission of the date of March 18, 1942, it was ordered inter alia, as follows:

"(A) The rates and charges made, demanded, or received by Colorado-Wyoming Gas Company for the transportation and sale of natural gas for resale in interstate commerce under its Rate Schedules FPC Nos. 1 to 5, inclusive, shall be reduced by not less than $119,000 per year;

"(B) Colorado-Wyoming Gas Company shall file on or before May 25, 1942, new schedules of rates and charges for or in connection with the transportation and sale of natural gas in interstate commerce for resale to reflect the reductions ordered in paragraph (A) above, which new schedules of rates and charges shall be effective as to all bills regularly rendered on and after June 15, 1942;"

V.

On April 20, 1942, in form and manner and within the time prescribed by the applicable rules and regulations of said Commission, petitioner filed with the Commission its "Petition of Colorado-Wyoming Gas Company for Rehearing, Reconsideration, Vacation and Modification of the Opinion and Order of the Commission Herein, Both of Date March 18, 1942."

The said Commission thereafter on, to-wit, the 13th day of May, 1942, denied said petition for rehearing, reconsideration, vacation and modification of said order of date March 18, 1942; that thereby and thereafter the said order became fixed and is now a final order and judgment of said Commission; that petitioner is aggrieved thereby, for the reasons hereinafter stated; petitioner has exhausted its remedies before said Commission; and now seeks review thereof, all in form and manner as permitted and prescribed by law.

VI.

The jurisdiction and authority of this court is invoked under Section 19 (b) of the Natural Gas Act, aforesaid (52 Stat. 831; Title 15 U.S.C. 717r).

VII.

Specification of Errors.

The Federal Power Commission in its said findings, conclusions and orders, committed error in the following particulars, upon each of which Petitioner intends to rely:

1. The finding that "During the year 1939 Wyoming Company transported and sold a total of 2,860,000 mcf of natural gas" (at 14.4 lbs. plus 4 oz., being a pressure base of 14.65 lbs.) (Op. page 9) is not supported by and is contrary to the uncontradicted evidence in the record. During the calendar year 1939, at the pressure above indicated, the purchases (that is, gas "transported" were 2,935,844 mcf and total deliveries (that is, gas "sold") were 2,856,801 mcf.

2. The finding and conclusion (Op. pages 10, 12) that the Commission has rate regulatory jurisdiction over sales for resale by Colorado-Wyoming Company in Colorado, to its parent company (100% ownership), Public Service Company of Colorado, and other companies (Greeley Gas and Fuel Company and Highway Gas Company) is not supported by and is contrary to the facts and the applicable law. The decision in Illinois Natural Gas Company v. Central Illinois Public Service Company, et al., 62 Sup. Ct. 384, cited and quoted by the Commission (Op. page 12), is not authority for the conclusion of jurisdiction adopted by the Commission.

3. The statements or findings that "Wyoming Company offered only 'actual construction costs, less observed depreciation, plus working capital and additions to plant, now and immediately in course of construction.' Commission staff restricted its plant studies to original cost and offered evidence of that character" (Op. pages 13, 14), are not supported by the record and are contrary thereto.

4. The Commission erred in that it failed and refused to consider actual "cost" and "original cost" in arriving at its determination of "rate base", as set up in the opinion and order herein, in that substantial items of such cost were rejected by the Commission.

5. The statements or findings of "original cost, as of December 31, 1939 — claimed by Company — $1,860,522"

(Op. page 14) and "original cost claimed by Wyoming Company of $1,712,114" (Op. page 23) are inconsistent, misleading, contrary to the record, and do not reflect the position and contentions of Colorado-Wyoming Company.

6. The finding and conclusion with respect to "interest on non-utilized facilities" (paragraph (1) Op. page 23) is not supported by and is contrary to the evidence and the law properly applicable to the uncontradicted relevant facts.

7. The finding and conclusion with respect to "interest during construction" (paragraph (2) Op. page 23) is not supported by and is contrary to the evidence and the law reasonably applicable to the established facts.

8. The finding and conclusion with respect to "miscellaneous adjustments" (paragraph (3) Op. page 24) is not supported by and is contrary to the evidence and the applicable law.

9. The sundry statements, argumentative generalizations, and conclusions under the heading entitled "Accrued and Annual Depletion, Depreciation and Amortization" (Op. pages 24-27) are not responsive to or consistent with the record herein, common experience, or the law applicable. In particular, the following generalizations of fact and law are not supported by but are contrary to the evidence in the record herein and are purely speculative and arbitrary.

"The determination of the annual allowances for * * *, depreciation * * * and the accrued depreciation in the properties must be consistent. * * *

"But, the principle of consistency is flagrantly violated in the evidence introduced by the companies in this proceeding. The accrued depreciation used by the companies is based upon observed percent condition of the property, which in a large measure is merely observed deferred maintenance. * * * Under the obse[illegible]n theory a high observed percent condition and consequently a low existing accrued depreciation result for many items of plant right down to the instant before they suffer the breakdown or obsolescence requiring retirement.

* * * * * *

"The evidence of the Commission staff treats accrued and annual allowance for depreciation on a simple, consistent, and reasonable basis. It is the application of the service life principle. • • • Its total life in service can be reasonably estimated with due consideration given to such influencing factors as probable life of the enterprise, gas reserves, obsolescence and inadequacy. • • • "

(Op. pages 24-26)

10. The finding of the Commission that "The net accumulation of these annual charges (Note: that is, the 'estimated' total service life divided into equal annual amounts) is the best possible determination of the expired outlay, hence the best measure of the actual depreciation existing in the property as of that date" (Op. page 26), is erroneous, in that such finding is contrary to fact and in conflict with the evidence in this record.

11. The "Conclusions as to Depreciation, Depletion and Amortization," wherein it is said:

"In view of the foregoing, the Commission adopts herein the service life principle for determining annual and accrued depreciation • • • . No serious controversy arose over the estimated service lives used by the Commission staff for the various classes of property other than main line pipe. These estimates stand as reasonable, and are adopted. • • • " (Op. pages 32-33)

are not supported by the record, are contrary to the evidence and are purely arbitrary and speculative. There is no evidence in this record from which "total life in service can be reasonably estimated," with respect to this defendant's property. Furthermore, there is serious controversy over the assumed service lives, unsupported by evidence, used by the Commission staff for the various classes of property, including main and branch line pipe, which constitute by far the great preponderance of plant cost and value.

12. The Commission, in its determination of "rate base," erred in giving no consideration whatever to actual accrued depreciation and the elements thereof, as universally defined by the courts and adopted by the Com-

mission itself as a measuring rule (Uniform System of Accounts, Natural Gas Act, Definition 14).

13. The Commission erred in ignoring and discarding entirely the uncontradicted evidence with respect to present service condition of the depreciable plant and property of this defendant.

14. The Commission erred in failing and refusing to find and give any effect whatever in its determination of "rate base" to the actual accrued depreciation of its depreciable plant and property as established by defendant company, through clear, specific and uncontradicted evidence at the hearings herein.

15. The Commission erred in its findings and conclusions as to "working capital" requirements of this defendant (Op. pages 35-36), which said findings and conclusions are not supported by and are contrary to the evidence and the weight of the evidence.

16. The Commission erred in its findings as to "Property Additions" of this defendant company (Op. page 36) during the years 1940 and 1941, which said additions were $39,246 in 1940 and $46,913 in 1941, a total of $86,169 instead of $78,813, as found by the Commission.

17. The Commission erred in excluding the sum of $12,183 from rate base as averaged "Contributions in Aid of Construction," (Op. page 37) in that none of the amounts making up the above total sum were contributed by customers (contrary to assumption, (Op. page 38) receiving service over which the Commission has rate regulatory jurisdiction, and the findings so made are not in conformity with law.

18. The Commission erred in its findings and conclusion denying "going concern value" in any amount whatever to defendant company (Op. pages 37-38), contrary to the evidence in the record and the applicable controlling law.

19. The Commission erred in its conclusion denying "going value," based on the findings that "the amount thereof is a judgment figure wholly unrelated to any costs or outlay" (Op. page 37) and is a "fictitious element of value" (Op. page 38), the former of which findings is not

relevant to the determination of the issue of "going value," and the latter of which findings is a mere characterization not in any manner or at all supported by the record.

20. The Commission erred in its "Conclusions as to Rate Base" of this defendant (Op. page 38), in that the same is not supported by and is contrary to the evidence, and is not justified by law but contrary thereto. The amount designated by the Commission as the "original cost as of December 31, 1939" of Colorado-Wyoming Company is less than the "bare bone" cost of the items of physical property only, as shown by the record herein, with no allowance whatever to cover "the cost of preliminary studies, plans, surveys, engineering, supervision and general expenses, which contribute directly and immediately to gas plant" (Uniform System of Accounts, Natural Gas Act, Instructions—Gas Plant Accounts 3. C. p. 38), and with no allowance whatever for "going concern value," that value which attaches to an assembled, operating and well managed enterprise, with business developed and attached. The Commission's so-called "original cost" is not such cost, either in fact or in law. The deduction of "accrued depreciation" so-called, in the amount of $395,944, is an accounting entry only and bears no actual or legal relation whatever to the condition or value of this defendant's property and plant in 1939, or at any other time. The so-called "Depreciated Original Cost" thus arrived at (plus "working capital" and "additions" less "customer contributions" as fixed by the Commission) is then found by the Commission to be the "rate base" and is described by it as "Prudent Investment" (Op. page 38), contrary to the meaning and judicial definition of that term both in fact and in law.

21. The Commission erred in failing and refusing to find and give effect to actual or reasonable "cost of preliminary studies, plans, surveys, engineering, supervision and general expenses which contributed directly and immediately to gas plant without duplication of such costs," in that such items actually and necessarily are part of and were comprehended in the "cost" and "original cost" of plant and property by this defendant, and the "prudent investment" therein, under the law and the evidence.

22. The Commission in its findings and conclusions as to the "rate base" of this defendant erroneously discards and excludes the "fair value" of the Company's plant and property, without authority of and contrary to the Natural Gas Act and the controlling principles and rules of law applicable.

23. The Commission erred in adopting the 1939 operations, revenues and expenses of this defendant as the measuring rod for the prospective operation of its rate reduction order of date March 18, 1942. All operations, revenues and expenses of Colorado-Wyoming Company for the year 1940 are in the record herein. The Commission statement that "the only complete income statements are to be found in Commission staff exhibits" (Op. page 39) is in error, is not supported by and is contrary to the record, in so far as this defendant is concerned. The assumption that "all factors considered (Note: which of necessity must include vastly heavier Federal taxes, which in 1939 were 16%, in 1940 were 24%, in 1941 were 31%, and in 1942 will be substantially higher) it may reasonably be expected that revenues will increase as rapidly, if not more rapidly, than costs for all three companies. Nevertheless, for the purposes of this order 1939 revenues and costs are considered to be representative of the relationship that will exist between these items in the immediate future" (Op. page 40) is without foundation in the evidence, and on the face of the opinion (Op. pages 3, 39-40) is argumentative, purely speculative and arbitrary. After the prediction above quoted, the Commission then strangely states "Prediction of future conditions, particularly under present emergency conditions, is beset with more than average difficulty." The Commission apparently is quite unmindful of operations of the year 1940 (fully covered in the record) and the year 1941, now also history. Yet the Commission erroneously predicts and concludes that "Use of 1939 figures, however, undoubtedly resolves most of the doubts as to future operation conditions in favor of the companies." The Commission conclusions are "guesswork and no more."

24. The Commission erred in failing to find and give any effect whatever to the 1940 operations, revenues and ex-

penses of Colorado-Wyoming Company, in its determination of "income available for return."

25. The Commission erred in determining the operating revenues of this defendant for the year 1939 to be $828,941 (Op. page 40). This was done by the erroneous elimination of a charge-off for Bad Debts in that year in the amount of $442, and the increase of revenues by that amount.

26. The Commission erred in finding "total operating expenses for 1939 of $85,364" (Op. page 47) resulting from the arbitrary exclusion from expense for that year, of $922, which it is said "represents a series of minor adjustments" (Op. page 47).

27. The Commission is in error in its finding that "The 1939 cost of purchased gas * * * was $498,103" (Op. page 47). This error results from the exclusion, from the Commission's total cost, of gas purchased from the Berthoud, Colorado field (51,069 mcf) in the amount of $5,107 during the calendar year 1939, together with carrying charge of $1,029.72, a total of $6,136, which should be added to the cost of purchased gas as set forth by the Commission. Gas purchased from Colorado Interstate Gas Company alone is included however in the Commission's figure above quoted. The sale of such Berthoud Field gas is included in Colorado-Wyoming Company "Operating Revenues 1939" (Op. page 40).

28. The Commission erred in its finding of "Total Revenue Deductions $678,853" (Op. page 48) to the extent of not less than $7,059, which should be reflected therein and added thereto.

29. The Commission erred in finding "$150,088 as the 1939 income available for return" (Op. page 48). This amount reduced by $7,059, the additional revenue deductions above pointed out, and $442 reduction in total revenue resulting from "Bad Debt" charge off, leaves not more than $142,387 as the 1939 income available for return, on the basis of computation employed by the Commission in its opinion herein.

30. The Commission erred in its finding that 6½% "is the maximum rate of return that can be considered fair"

(Op. page 52) for this defendant, in that the standard so announced by it is not supported either by the record or the law applicable. In arriving at this conclusion, the Commission did not consider and give effect to the detailed and uncontroverted evidence establishing an unusual risk and actual hazard, resulting from the subordination of the gas supply of Colorado-Wyoming Company to the prior rights to service enjoyed by the Cities of Denver and Pueblo, both of which are also nearer the source of supply.

31. The Commission erred in its summarized "Conclusions as to Amount of Excesive Returns" of this defendant, found to be $61,298, in that the "rate base—$1,366,000" is erroneous; the "Income available for return—$150,088" is erroneous; and "6½% on rate base $88,790" is erroneous (Op. page 53).

32. The Commission erred in finding that the earnings of Colorado-Wyoming Company are in excess of a reasonable return in any amount whatsoever.

33. The Commission erred in finding that its "determination of earnings in excess of a reasonable return • • • is based upon all the components of a rate case" (Op. page 53), in that such is not the fact and the so-called "components" as determined by the Commission are incorrect, not supported by the evidence, and contrary to law.

34. The Commission erred in failing and refusing to find that the existing rates and charges of Colorado-Wyoming Company are just and reasonable.

35. The Commission erred in its findings, despite the unquestioned fact that this defendant company is completely separate from and independent of the Candian River Company and the Colorado Interstate Company, in ownership, in control, in management and in operation, that

"However, to stop there is to ignore realities. The entire project, although involving facilities of three corporate entities, is, for all practical purposes, a single project now designed to produce, gather, transmit and sell natural gas from the Texas Panhandle field to consumers along the line as far north as Cheyenne, Wyoming" (Op. page 54).

The finding in question is without factual support in the record and directly contrary to law and to all relevant evidence.

36. The Commission erred in finding, as a basis for the application of the undisclosed method of allocation adopted by it, although "there are present in the proceeding three separate and distinct rate cases" (Op. page 53), and "although involving facilities of three corporate entities" (Op. page 54), two of which are wholly alien and unrelated to Colorado-Wyoming Company in ownership, control, management or operation, that, nevertheless, the three company defendants herein constitute "for all practical purposes, a single project" (Op. page 54). This conclusion is not supported by and is contrary to all the evidence in the case and to the law applicable to this situation.

37. The Commission erred in ignoring and discarding the "complete presentation of the entire operations" property, plant, revenues and expenses of this defendant "broken down between jurisdictional and non-jurisdictional operations" for the year 1940 as well as the year 1939.

38. The Commission erred in its finding that

"All that can be accomplished by an allocation of physical properties can be attained by allocating costs including the return." (Op. page 55)

in that said finding is contrary to the evidence and the weight of the evidence and the applicable law.

39. The Commission erred in its finding that

"Commission staff exhibits on cost allocation followed principles that have long been recognized as reasonable in the public utility field and are widely accepted." (Op. page 56)

in that said finding is contrary to fact, the record and the law.

40. The Commission erred in its findings and conclusions as to the alleged manner in which the asserted principles of allocation are applied in this case (Op. page 56), in so far as this defendant is concerned, in that the said conclu-

sions are not in accordance with, but inconsistent with, fact and the evidence in this record.

41. The Commission erred in failing and refusing to find and give effect in its "allocation of costs" to the uncontradicted and conclusive evidence in the record that, in the use of gas and the facilities of this defendant, domestic customers have preference over industrial customers; that such priority is expressly stipulated in all contracts of purchase and sale; that it is embodied in all franchise grants by cities and towns as a condition of permission to serve gas in such municipalities; and that such principle or rule of priority is of necessity applied and enforced in the actual normal winter operations of this defendant, by curtailment or shut-off of industrial consumers.

42. The "Allocation of Costs for Wyoming Company," as set forth in the methods and conclusions of the Commission (Op. pages 59-60) is in direct conflict with the uncontradicted facts established by the record, equity and fairness, and the law applicable. The method described by the Commission as "commonly used," is not so used, and the "system peak day" of Colorado-Wyoming Company is not considered or used by the Commission. The so-called modification of "methods of cost allocation presented by Commission staff" wherein it is said "the coincident demands of all customers on the system peak day are used, with exception of deliveries to Highway Gas Company" (Op. page 60) is in error, in that neither "system peak day" of Colorado Interstate Gas Company nor system peak day of Colorado-Wyoming Company is used either in the computations by Commission staff or by the Commission itself. There is in the record presentation by Commission staff, relied upon by the Commission in its opinion herein, no evidence whatever of "system peak day" demands or deliveries upon or by Colorado Interstate Gas Company or Colorado-Wyoming Company—in the year 1939 or any other year. All evidence by Commission staff purporting to reflect "system peak day" demands or deliveries is shown conclusively by the record to be either averages, estimates or guesses.

43. The Commission in its "allocation of cost for Wyo-

ming Company" could not and, therefore, did not follow either the formula of allocation presented by the Commission staff (even if it were correct in theory, which this defendant denies) or the equally erroneous modified formula "adopted" by it (Op. pages 59-60), in that there is no evidence in the record offered by the Commission staff other than averaged speculative estimates of "the separate class peaks of resale customers and the main-line industrial customers," or of "the coincident demands of all customers on the system peak day." Nor did the Commission, in its determination, use "the system peak day" of Colorado-Wyoming Company in 1939 or any other year.

44. The finding

"Deliveries to Highway Gas Company are for all practical purposes an exchange of gas with Goodstein Pipeline Company. The total amount of revenue involved is less than $700 per year. In view of these facts no attempt was made to make a special cost study and costs have been assumed to equal revenues." (Op page 60)

is not in conformity with the fact or the record, in that the purchases of gas from the Berthoud, Colorado field ($5,107 in 1939; $5,490 in 1940) are entirely independent of gas sales to Highway Gas Company ($693 in 1939; $1,045 in 1940).

45. The finding as to "excess returns" of Colorado-Wyoming Company in the amount of $159,000 (Op. page 60) is erroneous, in that each and every of the amounts used by the Commission to arrive at the said amount of $159,000 are incorrect and erroneous.

46. The summarized "allocation of costs" of Colorado-Wyoming Company, shown in table (Op. page 61), is erroneous with respect to "revenue" "allocated costs," and "excess revenue over costs," as applied to the three classifications "Direct Industrial Sales," "Sales to Public Authorities," and "Sales to other Gas Utilities." The total of "revenue" is correct, although the distribution thereof is not in conformity with the record. The so-called "allocated costs" are erroneous both in total and in distribution, are arbitrary, are factually inaccurate, are unreasonable, are contrary to the record, are not understandable, are predi-

cated on assumed facts and theories bearing no relation in fact or reason to the operations of Colorado-Wyoming Company, and are in defiance and disregard of all principles and requirements of priorities between domestic and industrial customers. The manner in which such "allocated costs" are arrived at by the Commission is not disclosed or discernible from the opinion or the record. The "excess revenue over costs" presumably are balancing figures and of necessity are erroneous, in that each and all amounts shown in the "revenue" and "allocated costs" columns are inaccurate and contrary to the evidence in this case.

47. The "Allocated Cost of Service—Sales to other Gas Utilities, 1939" (Op. Ex. B), while substantially accurate with respect to columns covering MCF sales, "revenue" and "Average Revenue ¢/MCF," are erroneous with respect to columns covering "allocated cost of service," "excess revenue over cost" and "Average Cost ¢/MCF," in that the amounts shown in such columns are predicated upon the erroneous so-called principles and methods of allocation presented by the Commission staff as modified by the Commission in its opinion. The proportion of distribution of "excess revenue over cost" to the several utilities specified, as ordered, is both arbitrary, impractical, unworkable, unfair and without support in the record, and further demonstrates the patently erroneous and arbitrary character of the Commission's entire procedure of allocation.

48. The Commission finding that "All Wyoming Company 'sales to other gas utilities' • • • are under its jurisdiction," (Op. page 61) is erroneous both in fact and in law.

49. The Commission erred in applying to this defendant methods of allocation not in any manner predicated upon or related to the actual business and operations of Colorado-Wyoming Company in 1939, or in any other year.

50. The Commission erred in not adopting and applying the principles and methods of allocation of plant, property, revenues and expenses fully and completely in evidence presented by this defendant for the years 1939, 1940 and subsequent years.

51. The Commission erred in making and entering its

formal findings numbered 2 to 13, both inclusive and each thereof (Order, pages 2-3), in that none of said formal findings is supported by the evidence, the preponderance of the evidence, or by substantial evidence and each and every of said findings is contrary to the evidence and the preponderance of the evidence in the record in this case.

52. The Commission erred in making and entering its formal orders (lettered (A) to (D)), both inclusive and each thereof, in that none of said formal orders is supported or justified by the applicable controlling law and each and every of said formal orders is contrary to law and the evidence and the preponderance of the evidence in the record herein.

53. The Commission erred in failing and refusing to make and enter the several findings and orders, (numbered 1 to 42, both inclusive), and each thereof, as requested by this defendant in its opening "Brief and Argument" before the Commission at pages 145 to 152, inclusive, in that each of said requested findings and orders is in conformity with the evidence, and the preponderance of the evidence, in this record and the law applicable and controlling.

54. The Commission has erred and denied to this defendant "due process," in that, throughout its opinion, it has announced general, vague, and argumentative ultimate conclusions, instead of making a "suitably complete statement" of the facts with respect to each of the several issues joined herein, and thereupon declaring "the basic or essential findings" of fact flowing from the evidence "required to support the Commission's order," whereby it is impossible to determine whether or not the controlling statutory and legal standards have been applied; the rights of this defendant are thus "whittled away"; and the opinion, as a consequence, becomes merely "a perfunctory process."

This specification relates particularly to the several findings and conclusions of the Commission in relation to cost of plant, accrued and annual depreciation, rate base, going concern value, adoption of the year 1939 as the measuring rod of its findings, conclusions and orders, net return, excessive return, rate of return, allocation of costs and distribution of alleged excess revenue.

55. Throughout its opinion this Commission has misconstrued and misapplied the "Natural Gas Act," greatly to the prejudice and deprivation of this defendant, in that the Commission has failed to distinguish between the specific statutory functions and authorities vested in the Commission and the judicial function vested in the courts. The Commission herein has undertaken to establish what it conceives to be "the lowest possible reasonable rate," instead of following the clear statutory grant of authority declaring that, in fixing rates, "The Commission shall determine the just and reasonable rate * * * and shall fix the same by order." (Act, Sec. 5 (a)).

Thus, it has failed to observe those standards which Congress has made "prerequisite to the operation of its statutory command." By reason of such failure and misconstruction of the statute under which alone it derives its authority, the Commission has greatly exceeded such authority, has disregarded the law under which it operates, and has denied "due process" of law to this defendant, in each and all of the matters stated in these specifications.

56. The Commission erred in adopting, as its measuring rod of reasonableness of rates and service, the year 1939, in that, said year was a normal pre-war year, whereas, the order of the Commission is prospective and effective and operative only beginning in this year 1942, in which all normal peace-time economic, financial and living standards have been supplanted, superseded and discarded by orders of government and the necessities of national defense.

57. The Commission erred in making and entering any order other than one of dismissal or continuance of this rate case, in that, there is no factual evidence whatever whereby the Commission can, other than by speculation or guesswork, appraise the present and future operation and effect of the existing national and world-wide unprecedented emergency upon the costs, service and operations of this defendant.

58. That the findings and order of the Commission herein will, in operation and effect, deprive Colorado-Wyoming Company of its property without due process of law, con-

trary to and in violation of the Fifth Amendment to the Constitution of the United States.

59. That the findings and order of the Commission herein will, in operation and effect, constitute a confiscation of the property of Colorado-Wyoming Company without just compensation, or any compensation, being paid therefor.

60. The Commission erred in making and entering its "Opinion No. 73" herein, and in making and entering its "Order Reducing Rates Colorado-Wyoming Gas Company" herein, of date March 18, 1942, in that the same are not supported by substantial evidence and are contrary to law.

61. The Commission erred in overruling and denying on May 13, 1942, "Petition of Petitioner for Rehearing, Reconsideration, Vacation and Modification of the said Opinion and Order of the Commission herein," of date March 18, 1942.

Wherefore, Petitioner prays:

(1) That upon the filing hereof, the Clerk of this court serve a copy of this petition upon the Honorable Leland Olds, Chairman of the Federal Power Commission, Respondent herein, and upon each of the other respondents herein, and command said Commission, within forty (40) days from the date thereof, to certify and file in this court transcript of the record upon which the order complained of was entered, including all pleadings, orders, transcript of testimony, exhibits, report and recommendations of the Trial Examiner, findings, conclusions and order of the Commission of date March 18, 1942, petition for vacation, rehearing and stay and opinion and order denying said petition for vacation, rehearing and stay, all in form and manner as provided by law.

(2) That on final hearing and determination hereof, the said findings, conclusions and order of said Commission of date March 18, 1942, be in all things set aside, reversed and held for naught.

(3) For such other and further relief as shall appear to be meet and equitable in the premises.

Filed July 10, 1942. Robert B. Cartwright, Clerk.

Order Staying Orders of Commission etc.

Twentieth Day, March Term, Saturday, May 16th, A. D. 1942. Before Honorable Sam G. Bratton, Honorable Walter A. Huxman and Honorable Alfred P. Murrah, Circuit Judges.

This cause this day coming on for hearing before the court, upon the petition of Colorado-Wyoming Gas Company for a stay pending the completion and determination of review of the "Order Reducing Rates" of the Federal Power Commission, dated March 18, 1942, which Order (incorporating Opinion No. 73 of said Commission) was entered by said Commission in Causes Nos. G-118, G-121 and G-124 on the docket of said Commission.

And it appearing to the court that on May 13, 1942, said Commission, by Order entered on that date, denied the petition for rehearing and stay, theretofore, on April 20, 1942, filed by Colorado-Wyoming Gas Company in said proceedings.

And it further appearing to the court that each of the respondents herein has been duly served with copy of said petition filed herein, and of notice of this hearing;

And it further appearing that the amount, character and time of ordered reduction affecting this petitioner were and are as set forth in said Commission Order of March 18, 1942, as follows:

"(A) The rates and charges made, demanded, or received by Colorado-Wyoming Gas Company for the transportation and sale of natural gas for resale in interstate commerce under its Rate Schedules FPC Nos. 1 to 5, inclusive, shall be reduced by not less than $119,000 per year;

"(B) Colorado-Wyoming Gas Company shall file on or before May 25, 1942, new schedules of rates and charges for or in connection with the transportation and sale of natural gas in interstate commerce for resale to reflect the reductions ordered in paragraph (A) above, which new schedules of rates and charges shall be effective as to all bills regularly rendered on and after June 15, 1942;"

And it further appearing that of the total amount of ordered reduction in the sum of $119,000.00 per annum, the sum of $98,000.00 represents the amount by which the rates of respondent Colorado Interstate Gas Company, chargeable against Petitioner, were on March 18, 1942, concurrently ordered reduced by the Federal Power Commission so that the net amount after offsetting the saving available to Petitioner, by reason of such ordered reduction in rates chargeable by Colorado Interstate Gas Company, is the sum of $21,000.00 per annum, in event the Order of the Commission shall be sustained on review by this court;

And it further appearing that the said Colorado Interstate Gas Company has signified its intention to seek judicial review of said Order and has petitioned this court for a stay pendente lite of the same affecting the aforesaid determination that its rates applicable to Petitioner and effective, in accordance with rate schedules ordered to be filed by it May 19, 1942, be reduced in the amount of $98,000.00, which application has been heard in conjunction with that of the Petitioner herein, and has been granted under requirements similar to those imposed by this Order on Petitioner as conditions of ordering such stay;

And the court having considered the petition herein, and heard the argument of counsel thereon, does find that it is necessary for the exercise of this court's jurisdiction in the review of said Order, under the Natural Gas Act, that the matter be held in status quo until the review herein, at the instance of Colorado-Wyoming Gas Company, is perfected and finally determined.

It is now, therefore, hereby ordered that the said Order of the Federal Power Commission be and the same is hereby stayed and suspended until the further order of this court, in so far as it is directed to or affects the Petitioner, Colorado-Wyoming Gas Company.

And it is further ordered that the Federal Power Commission and Leland Olds, Claude L. Draper, Basil Manly, John W. Scott and Clyde L. Seavey, the persons constituting the Federal Power Commission, and their successors in office, and each and all of the other respondents, and the agents and attorneys of each and all of the respondents,

be and they are hereby enjoined and restrained, until the further order of this court, from enforcing, causing to be enforced, or attempting to enforce, against the Petitioner, Colorado-Wyoming Gas Company, the said order of the Federal Power Commission dated March 18, 1942, entered in the above numbered causes on the docket of the Commission; and from taking any steps or instituting any proceedings, or causing any steps to be taken or proceedings to be instituted against Petitioner, Colorado-Wyoming Gas Company, its officers, agents or employees, to enforce any penalties, fines or other remedy for disregarding said Order of March 18, 1942.

This Order is made upon the condition that the Petitioner, Colorado-Wyoming Gas Company, shall pay, or cause to be paid, to the purchasers of natural gas under its rate schedules F.P.C. Nos. 1-5, inclusive, referred to in said Order of the Commission, as their several interests appear, the amount representing the reduction in the gross revenues of Colorado-Wyoming Gas Company which shall have accrued pending a determination of this review proceeding, to the same extent as if new schedules of rates and charges had been filed by Colorado-Wyoming Gas Company on May 25, 1942, pursuant to said Order of the Commission requiring a reduction in said rates and charges of not less than $119,000.00 per year, together with all costs which may be adjudged against Colorado-Wyoming Gas Company should said Order of the Commission be sustained; and as surety, and solely in lieu of bond, shall deposit with the First National Bank of Denver, Colorado, or any other Federal depository to be approved by this court, or a Judge thereof, under an escrow agreement also to be approved by this court, or any Judge thereof, on or before June 15, 1942, the sum of $1,750.00; and the sum of $1,750.00 on the 15th day of each succeeding calendar month thereafter until said review proceeding is finally determined and adjudicated.

The said amounts so deposited shall remain on deposit in said bank or banks pending a determination of said review proceeding, and said deposit shall be kept in a separate account as a special deposit, and said bank or banks shall furnish each month a certificate to the Clerk of this court and a copy thereof to the Federal Power Commis-

sion; that said moneys have been thus deposited, and remain on deposit as provided herein and in said escrow agreement; subject, however, to the further order or orders of this court, to be returned to such ultimate consumers of gas or persons to whom the court shall find the same should be returned, as contemplated by the provisions of the Natural Gas Act.

Nothing in this Order contained shall be considered as a determination of the amounts eventually to be refunded by Colorado-Wyoming Gas Company upon the final determination and adjudication of said review proceeding.

The cost, consisting of the escrow fee and the cost of refunding the escrow funds in the event a refund is ordered, shall be assessed by the further orders of this court.

Denver, Colorado, May 18, 1942.

The First National Bank of Denver, Colorado, Denver, Colorado.

Dear Sirs: Enclosed herewith is a certified copy of an order of this, the Tenth Circuit Court of Appeals, made and entered May 16, 1942, in Case No. 2561, Colorado-Wyoming Gas Company, a corporation, Petitioner, vs. Federal Power Commission, et al., Respondents, wherein Colorado-Wyoming Gas Company is directed to deposit with you, or some other Federal depository approved by this court, as a special deposit the sum of $1,750.00 on or before June 15, 1942, and to make monthly additional special deposits, as set forth in said order. Said special deposits are to remain on deposit pending the final determination and adjudication of the review proceedings, and are to be disbursed upon the further order of this court, all as set forth in said order of May 16, 1942.

Will you accept, hold and finally disburse all of said special deposits and act as escrow agent or holder thereof, all in accordance with the terms of said order and the further orders of this court. If so, will you acknowledge your acceptance by signing the copies of this letter at the place indicated, and return to the undersigned at once.

The Colorado-Wyoming Gas Company will make the

first special deposit on June 15, 1942, by a certified check to your order in the amount of $1,750.00.

This letter, and your acceptance of the terms hereof, as indicated, will constitute the escrow agreement mentioned in the order.

Very truly yours,

ROBERT B. CARTWRIGHT, Clerk, United States Circuit Court of Appeals, Tenth Circuit.

Approved: SAM G. BRATTON, Judge.

Accepted: THE FIRST NATIONAL BANK OF DENVER, COLORADO, By P. K. ALEXANDER, Vice-President.

Filed May 18, 1942. Robert B. Cartwright, Clerk.

Order Re Designations of Printed Record.

Forty-third Day, March Term, Tuesday, July 14th, A. D. 1942. Before Honorable Orie L. Phillips, Circuit Judge, and Honorable J. Foster Symes, District Judge.

It appearing to the court that the petition of the petitioner in this cause is to review and set aside an order of the Federal Power Commission and that in cause No. 2550 on the docket of this court Colorado Interstate Gas Company, as petitioner, has likewise filed a petition to review and set aside an order of the Federal Power Commission directed to said Colorado Interstate Gas Company and entered in the same dockets before the said Commission; and it further appearing to the court that in cause No. 2551 on the docket of this court Canadian River Gas Company has also filed a petition to review and set aside an order of the Federal Power Commission directed to it and entered in the same dockets before the said Commission; and it further appearing to the court that under Rule 34 of the rules of this court a single record on review should be prepared in this cause and in said causes Nos. 2550 and 2551 containing all matter designated by all parties to said three proceedings without duplication; and it further appearing from telegrams, the originals or copies of which are on file with the clerk of this court, that in each of said three causes the petitioner therein and the respondent, Federal

Power Commission, in the interest of saving both time and expense and for the purpose of affording time to enable the parties to attempt to agree upon the portions of the transcript to be included in the printed record, have agreed to an extension of time for the filing of the transcript of the record by the Federal Power Commission in said three causes and for an extension of time for the designation of the portion of the record to be printed;

Now, therefore, it is hereby ordered:

1. That a single record on review shall be filed by the Federal Power Commission in said three causes pending herein.

2. That the respondent, Federal Power Commission, shall have to and including the 10th day of September, 1942, within which to certify and file with this court the transcript of record upon which the orders entered by the Federal Power Commission in said three proceedings are now sought to be reviewed in this court.

3. That the petitioner herein shall have to and including the 10th day of October, 1942, within which to file its designation of the portions of the transcript it desires to be contained in the printed record.

4. That the respondents herein, and any intervener herein entitled under the rules of this court to participate in the designation of the record, shall have to and including the 10th day of November, 1942, within which to designate such additional portions of the transcript as they desire to be included in the printed record.

5. That the petitioner herein shall thereupon have to and including the 25th day of November, 1942, within which to designate such further parts of the transcript of the record which are to be contained in the printed record.

Motion to Dismiss.

To the United States Circuit Court of Appeals for the Tenth Circuit and the Honorable Judge Thereof:

Comes now the Public Service Commission of Wyoming by its Attorneys, Ewing T. Kerr, Harold I. Bacheller, and Arthur Kline, specially for the purposes of this motion,

and not generally, in its own behalf and in behalf of such other of the respondents herein as may see fit to appear in this behalf and participate in this motion, and moves the court as follows:

1. To dismiss the petition herein on the ground that it is in the wrong circuit, because (a) the jurisdiction of this court is invoked solely on the ground that Section (19 b) of the Natural Gas Act of June 21, 1938, c556, 52 Stat. 833; Section 717r(b), Title 15 U. S. C. A., provides that:

"Any party to a proceeding under this Act (chapter) aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural gas company to which the order relates is located or has its principal of place of business, * * *"

and it appears upon the face of said petition that:

(a1) Petitioner is a private corporation organized and existing under the laws of the State of Delaware.

(a2) Said petition fails to allege that said company is located in the tenth circuit for which your honorable circuit court of appeals, sitting as a federal court, has and may take jurisdiction as in such cases is made and provided by said natural gas act.

(a3) Said petition fails to allege its principal place of business or any facts to show the place of said company's location or its principal place of business other than that petitioner is a private corporation organized and existing under the laws of the State of Delaware.

(b) It affirmatively appears on the face of said petition that said petitioner is not located in and that it does not have its principal place of business within said circuit.

(c) It affirmatively appears upon the face of the record in said cause by the testimony of the petitioner's own witness and by facts dehors the record that it is not located and that it does not have its principal place of business in said circuit; and this said respondent is ready to verify.

Filed August 15, 1942. Robert B. Cartwright, Clerk.

Order Denying Motion to Dismiss Petition to Review.

Sixth Day, September Term, Monday, September 14th, A. D. 1942. Before Honorable Sam G. Bratton, Honorable Walter A. Huxman and Honorable Alfred P. Murrah, Circuit Judges.

These causes came on to be heard on motions to dismiss the petitions for review filed herein by petitioners, Thomas H. Gibson, Esquire, appearing for City and County of Denver, John P. Akolt, Esquire, appearing for Colorado Interstate Gas Company and Canadian River Gas Company, Donald McCreery, Esquire, appearing for Colorado-Wyoming Gas Company.

By leave of court, petitioners Colorado Interstate Gas Company and Canadian River Gas Company were granted leave to file amendments to their petitions for review. The motions to dismiss filed by the City and County of Denver were renewed as to the petitions of the Colorado Interstate Gas Company and Canadian River Gas Company, as amended. Thereupon the causes were argued to the court.

On consideration whereof, it is now here ordered that the said motions to dismiss the petitions for review of the Colorado Interstate Gas Company, as amended, the Canadian River Gas Company, as amended, and the Colorado-Wyoming Gas Company be and the same are hereby denied.

Order Extending Time for Designation of Printed Record.

Fourteenth Day, September Term, Monday, October 5th, A. D. 1942. Before Honorable Orie L. Phillips, Circuit Judge, and Honorable J. Foster Symes, District Judge.

This cause came on to be heard on the motion of petitioner for an extension of time within which to file a stipulation or designation of the parts of the record to be printed herein and was submitted to the court.

On consideration whereof, counsel for respondent, Federal Power Commission, consenting thereto, it is now here ordered by the court that the said motion be and the same is hereby granted and that the time within which petitioner

may file a stipulation or designation of the parts of the record to be printed herein be and the same is hereby extended to and including the 25th day of November, 1942.

[An order of the United States Circuit Court of Appeals was entered November 24, 1942, extending the time for filing the designation of the printed record to December 10, 1942.]

Stipulation for and Designation of Printed Record

Comes now Colorado-Wyoming Gas Company, Petitioner, and Federal Power Commission and Public Service Commission of Wyoming, Respondents in interest herein (and certain other respondents), pursuant to Rule 34, paragraph 5 of the Revised Rules of the United States Circuit Court of Appeals of the Tenth Circuit and the Orders of Court herein, and respectively stipulate and designate such portions of the transcript and proceedings before this Court, as shall be printed and constitute the "Printed Record" herein, to-wit:

[In conformity with the order of the United States Circuit Court of Appeals, infra, the remaining portion of the stipulated designation of the printed record is omitted.]

Filed December 9, 1942. Robert B. Cartwright, Clerk.

Forty-Seventh Day, September Term, Friday, December 11th, A. D. 1942. Before Honorable Orie L. Phillips, Circuit Judge, and Honorable J. Foster Symes, District Judge.

This cause came on to be heard on the application of petitioner for leave to have the stipulated designation of the record omitted from the printed record in this cause and was submitted to the court.

On consideration whereof, it is now here ordered by the court that that part of paragraph 5, subdivision (d), of rule 34, which provides that the printed record shall contain among other things the designations or stipulations as to the contents of the record, be and the same is hereby waived and that the record in this cause be printed without the inclusion therein of the stipulated designation.

Pleas and proceedings in the United States Circuit Court of Appeals for the Tenth Circuit, at the January and May Terms, 1944, of said Court, before Honorable Sam G. Bratton, Honorable Walter A. Huxman and Honorable Alfred P. Murrah, Circuit Judges.

On the 9th day of September, A. D. 1942, a transcript of the record, pursuant to a petition to review and set aside orders of the Federal Power Commission, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Tenth Circuit, in a certain cause wherein Colorado-Wyoming Gas Company, a corporation, was petitioner, and Federal Power Commission et al. were respondents, which said transcript, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Tenth Circuit, is in the words and figures following:

PLEAS, PROCEEDINGS AND ORDERS BEFORE THE FEDERAL POWER COMMISSION.

In the Matter of

The Investigation of the Natural Gas Gate Rate Charged The Cheyenne Light, Fuel and Power Company by the Colorado-Wyoming Gas Company.

Docket No. G-121.

Petition.

The Public Service Commission of the State of Wyoming respectfully petitions the Federal Power Commission to establish a just and reasonable Cheyenne, Wyoming gate rate schedule for natural gas sold to the Cheyenne Light, Fuel and Power Company by the Colorado-Wyoming Gas Company, and your petitioner shows this honorable Commission:

I.

That petitioner is a "State Commission" as defined in Section 2 (8) of the "Natural Gas Act."

II.

That under the provisions of said "Natural Gas Act" and particularly Section 13 thereof, authority to file this petition is granted.

III.

That the gas distributed in Cheyenne by the Cheyenne Light, Fuel and Power Company is produced in the vicinity of Amarillo, Texas, by the Canadian River Gas Company and piped to Clayton, New Mexico, thence through the Colorado Interstate Gas Company lines to Littleton, Colorado, thence through the Colorado-Wyoming Gas Company line to Cheyenne, Wyoming. All transportation of said natural gas being in interstate commerce.

IV.

That during the year 1937, 477,183 M.C.F. of natural gas were purchased at Cheyenne, Wyoming, by the Cheyenne Light, Fuel and Power Company.

V.

That all of the common stock of the Canadian River Gas Company is owned by the Southwestern Development Company who also owns 42½ percent of the Colorado Interstate Gas Company of which the Public Service Company of Colorado owns 15 percent interest. The Cheyenne Light, Fuel and Power Company and the Colorado-Wyoming Gas Company are both owned by the Public Service Company of Colorado, which is a subsidiary of the City Service Company.

VI.

That your petitioner under its Docket No. 1680, in 1934 endeavored, by investigation, to establish a reasonable rate schedule to be applied by the Cheyenne Light, Fuel and Power Company in its distribution of natural gas to domestic and commercial consumers in Cheyenne, Wyoming. This case developed the information that the gas produced by the Canadian River Gas Company in the vicinity of Amarillo, Texas, was sold to the Colorado Interstate Gas Company, who after transporting same to Littleton, Colorado, a pipeline distance of 340 miles, sold the gas to the Colorado-Wyoming Gas Company for 17 cents per M.C.F. The Colorado-Wyoming Gas Company then transported the gas to Cheyenne, Wyoming, a pipeline distance of 115 miles, and sold the same to the Cheyenne Light, Fuel and Power Company at a gate rate of 42 cents per M.C.F. It appeared that if 17 cents per M.C.F. was a fair and reasonable rate for the sale of natural gas after transporting the same 340 miles, the 42 cent rate for the sale at the Cheyenne City gate, a point 115 miles more distant, was unjust and unreasonable; however, due to the fact that the Cheyenne gate rate was a controlling factor in determining reasonable retail charges, the investigation was frustrated because the transportation and wholesale distribution involved was an interstate operation. It is understood by your petitioner that there has been a slight revision in the above mentioned rates, but that substantially the same situation exists at this date.

VII.

That petitioner, under date of December 9, 1938, unanimously adopted the following motion:

"Under provision of Section 94-116 Wyoming Revised Statutes, 1931, it was moved that the Commission on its own motion make a complete investigation of all rates charged by the Cheyenne Light, Fuel and Power Company, and if any of said rates be found to be unjust, unreasonable, or excessive that said Company be required to show cause why said rates should not be immediately reduced to such amounts as this Commission may find reasonable and that all the provisions of Chapter 94 Wyoming Revised Statutes, 1931, shall apply to this investigation and findings of the Commission, and that a resolution be adopted, by this Commission, and presented to the member of the State Legislature, which body will convene January 10, 1939, petitioning that body to appropriate sufficient funds to conduct a formal investigation of this Company and any other Utility that this Commission deems necessary."

The above resolution was served upon the Cheyenne Light, Fuel and Power Company.

VIII.

That such state investigation concerning retail gas rates as stated in paragraph VII would be greatly facilitated by the Federal Power Commission fixing a reasonable Cheyenne, Wyoming natural gas gate rate.

IX.

That by reason of interlocking stock ownership and certain long term operating agreements it appears that there is no "at arm's length dealing" between any of the aforementioned corporations, and it also appears that these corporations have been able to dictate, when they so desire, unjust, unreasonable, and discriminatory rates that have ultimately developed a burden upon the Cheyenne consumer.

Wherefore, your petitioner respectfully requests that the Commission for the reasons herein set forth, or for any reasons that may be developed through any investigative action of the Commission, as authorized by the "Natural Gas Act," determine and fix a just and reasonable Cheyenne, Wyoming gate rate for all natural gas sold to the Cheyenne Light, Fuel and Power Company.

Separate Answer of Colorado-Wyoming Gas Company.

Comes now the defendant Colorado-Wyoming Gas Company, a corporation organized and existing under and by virtue of the laws of the State of Delaware, and for its separate answer to the complaint or petition of Public Service Commission of the State of Wyoming, alleges, admits and denies as follows, to-wit:

For a First Defense.

1. This defendant denies that the Federal Power Commission has any jurisdiction over any transaction or operation of Colorado-Wyoming Gas Company, and challenges and denies any jurisdiction, power or authority of this Commission to enter any orders, judgments or decrees attempting to change, modify, regulate, or set aside any charge or price at which Colorado-Wyoming Gas Company is selling natural gas to the Cheyenne Light, Fuel & Power Company at the city gate of Cheyenne, in the State of Wyoming, or to enter any orders, judgments or decrees attempting to change, modify, regulate, or set aside any charge or price at which Colorado Interstate Gas Company is selling natural gas to this defendant, or to substitute and prescribe any different charge or price for which Colorado-Wyoming Gas Company shall sell natural gas in the State of Colorado, the State of Wyoming, or elsewhere; and, as grounds for the matters and things alleged in this defendant's First Defense, this defendant alleges that it is not a public utility, and has not devoted its property to the public service but is selling its commodity at wholesale to selected customers under private contract.

This defendant has not and does not now hold itself out as willing or able to serve the public generally with natural gas, or to supply said commodity to any other customers than those customers with whom it has private contracts.

This defendant has never exercised any of the rights or privileges of a public utility or common carrier, nor held itself out as such, and has never exercised the right of eminent domain in the State of Colorado, the State of Wyoming, or elsewhere, and has not transported gas for others nor in any way acted as a public carrier for hire.

This defendant alleges that its enterprise from its inception has always been strictly private in character, and that no part of it is affected with a public interest in the sense that the Congress would have jurisdiction, power or authority to enact legislation purporting to authorize said Federal Power Commission to regulate the prices which it charges for natural gas which it sells.

The Natural Gas Act of 1938, in so far as the same purports to confer, or is interpreted by said Federal Power Commission to confer, on said Commission any jurisdiction, power or authority to regulate, change, modify, or set aside the charges or prices at which this defendant is selling natural gas at wholesale, or to authorize said Commission to determine and fix the charges or prices for which it shall sell such commodity, deprives this defendant of its property and liberty of contract without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, and any rules, regulations or orders promulgated by said Commission for the purpose of exercising any jurisdiction, power or authority, as aforesaid, will be null and void, and contrary to and in violation of said Fifth Amendment to the Constitution of the United States.

For a Second Defense.

Subject to the ruling of this commission and of the courts on this defendant's first defense and the special plea to the jurisdiction of said commission, and without waiving but still insisting on said first defense, this defendant, for its further separate and second defense alleges:

1. Answering paragraph numbered I, this defendant admits each and every allegation therein contained.

2. Answering paragraph numbered II, this defendant admits each and every allegation therein contained.

3. Answering paragraph numbered III, this defendant admits that substantially all of the natural gas distributed in the City of Cheyenne and the State of Wyoming by the Cheyenne Light, Fuel & Power Company is purchased in the vicinity of Amarillo, Texas, by the Canadian River Gas Company; and thence piped to Clayton, New Mexico; and thence through the Colorado Interstate Gas Company lines to Littleton, Colorado, where said gas is sold and delivered

by the said Colorado Interstate Gas Company to this defendant, and thence transported by this defendant through its pipe line to the city gate at Cheyenne, Wyoming, at which point said gas is sold and delivered by this defendant at wholesale to the Cheyenne Light, Fuel & Power Company under contract hereinafter mentioned and referred to. That, in addition to the natural gas supplied and sold to this defendant by the said Colorado Interstate Gas Company, an insignificant part of the natural gas sold and delivered by this defendant at the city gate of Cheyenne to the said Cheyenne Light, Fuel & Power Company, is purchased and obtained by this defendant in the so-called "Berthoud Gas Field," located near the Town of Berthoud, Larimer County, State of Colorado. That the amount of gas thus obtained consists of only a small fraction of one per cent of the total amount of gas sold and delivered by this defendant to the Cheyenne Light, Fuel & Power Company.

Further answering said paragraph numbered III, this defendant admits that the transportation of said natural gas by this defendant from the point of purchase and delivery to it near the said Town of Littleton, Colorado, to the said city gate at Cheyenne, Wyoming, is in interstate commerce.

Further answering said paragraph numbered III, this defendant denies each and every allegation therein contained, not herein specifically denied or admitted.

4. Answering said paragraph numbered IV, this defendant admits each and every allegation therein contained.

5. Answering paragraph numbered V, this defendant admits that the Cheyenne Light, Fuel & Power Company and this defendant are wholly-owned subsidiaries of Public Service Company of Colorado.

Further answering said paragraph numbered V, this defendant admits that Public Service Company of Colorado owns 15% of the common capital stock of Colorado Interstate Gas Company, and is a subsidiary of Cities Service Power & Light Company, a Delaware corporation.

Further answering said paragraph numbered V, this defendant alleges that with respect to each and every other allegation therein contained, this defendant has not and

cannot obtain sufficient knowledge or information upon which to base a belief.

6. Answering paragraph numbered VI, this defendant admits that the complainant and petitioner herein caused an investigation to be made of the rates charged by the Cheyenne Light, Fuel & Power Company in the year 1934, in a proceeding entitled "In re Investigation of the Gas Rates for the City of Cheyenne, Wyoming, of the Cheyenne Light, Fuel & Power Company and of the Gate Price Charged the Local Distributing Company by the Colorado-Wyoming Gas Company," being Docket No. 1680 of said Commission.

Further answering said paragraph numbered VI, this defendant alleges that, on, to-wit, the 3rd day of October, 1929, it made and entered into an agreement in writing with the defendant Colorado Interstate Gas Company, whereby and whereunder this defendant agreed to purchase, and the defendant Colorado Interstate Gas Company agreed to sell to this defendant, natural gas at the prices and upon the terms and conditions as therein provided. That thereafter and on, to-wit, the 8th day of October, 1929, said agreement of October 3, 1929, was amended by an agreement in writing whereby and whereunder certain modifications with respect to the prices to be paid by this defendant for natural gas, as therein provided, were made by and between this defendant and the defendant Colorado Interstate Gas Company. That during the pendency of said proceeding before the petitioner and complainant herein, in the year 1934, said agreement of October 3, 1929 (Exhibit "A") and said agreement of October 8, 1929 (Exhibit "B") were in full force and effect.

Further answering said paragraph numbered VI, this defendant alleges that on, to-wit, the 25th day of September, 1931, this defendant made and entered into an agreement in writing with the Cheyenne Light, Fuel & Power Company, whereby and whereunder this defendant agreed to sell, and the said Cheyenne Light, Fuel & Power Company agreed to purchase at wholesale from this defendant, natural gas at the prices and upon the terms and conditions as therein provided. That thereafter, and on, to-wit, the 24th day of August, 1934, said agreement of September 25, 1931, was amended by an agreement in writing whereby and where-

under certain modifications with respect to the prices to be paid by the said Cheyenne Light, Fuel & Power Company to this defendant for said natural gas as therein provided were made by and between this defendant and the said Cheyenne Light, Fuel & Power Company. That thereafter and on, to-wit, the 1st day of August, 1938, said amendatory agreement of September 25, 1931, was amended by an agreement in writing whereby and whereunder certain modifications with respect to the prices to be paid by the said Cheyenne Light, Fuel & Power Company to this defendant for said natural gas as therein provided were made by and between this defendant and the said Cheyenne Light, Fuel & Power Company. That attached hereto and made a part hereof by reference is a true and correct copy of said agreement of August 24, 1934, marked Exhibit "C", a true and correct copy of said amendatory agreement of September 25, 1931, marked Exhibit "D", and a true and correct copy of said amendatory agreement of August 1, 1938, marked Exhibit "E".

Further answering said paragraph numbered VI, this defendant alleges that said proceeding, being Docket No. 1680, before the Public Service Commission of the State of Wyoming resulted in a final order being entered by said Commission on, to-wit, the 18th day of August, 1934, whereunder a schedule of rates for natural gas to be distributed by the said Cheyenne Light, Fuel & Power Company to its consumers was ordered, fixed and promulgated, said order reciting and providing, inter alia, as follows:

"The above-entitled cause now coming on for final disposition after investigation and hearings, and agreed settlement between the Cheyenne Light, Fuel & Power Company and the Public Service Commission, it is ordered;"

(Note: Here follows prescribed rate schedules.)

"It further appears that the said company, having now fully complied with the terms of this order, this investigation and cause is hereby dismissed and the docket hereby closed.

"Dated at Cheyenne, Wyoming, this 18th day of August, 1934."

Further answering paragraph numbered VI, this defendant admits that the transportation by this defendant of natural gas from a point near the Town of Littleton in the State of Colorado to the city gate of the City of Cheyenne in the State of Wyoming was and is transportation in interstate commerce.

Further answering said paragraph numbered VI, this defendant denies each and every allegation therein contained not herein specifically admitted or denied.

7. Answering paragraph numbered VII, this defendant admits that the motion set forth in said paragraph numbered VII was duly adopted on the 9th day of December, 1938, by the complainant and petitioner herein. That as to whether or not said resolution was served upon the Cheyenne Light, Fuel & Power Company, this defendant does not have sufficient knowledge or information upon which to base a belief.

8. Answering paragraph VIII, this defendant alleges that it does not have and cannot obtain sufficient knowledge or information upon which to base a belief with respect to the allegations therein contained.

9. Answering paragraph numbered IX, this defendant denies that there is an interlocking stock ownership among and between all of the defendants herein; admits that this defendant is a subsidiary of Public Service Company of Colorado, a Colorado corporation, that Cheyenne Light, Fuel & Power Company likewise is a subsidiary of Public Service Company of Colorado, and that said Public Service Company of Colorado is a subsidiary of Cities Service Power & Light Company, a corporation of the State of Delaware, and that said Public Service Company of Colorado is the owner of an undivided minority interest consisting of 15% of the common capital stock of the defendant, Colorado Interstate Gas Company.

Further answering said paragraph numbered IX, this defendant alleges that it has at all times herein mentioned dealt and contracted with the other defendants herein independently and at arm's length; denies that this defendant has entered into any contracts with any of the other defendants pursuant to dictation from any of the other defendants herein, or dictated by any other person or corporation.

Further answering said paragraph numbered IX, this defendant denies each and every allegation therein contained not specifically herein admitted or denied.

Colorado Interstate Gas Company and Canadian River Gas Company each filed an answer (Documents Nos. 7 and 8 in the Transcript of the Record) to the Complaint of the Public Service Commission of Wyoming.

Order Instituting Investigation.

March 14, 1939.

In the Matter of Canadian River Gas Company, et al. Docket No. G-124.

It appearing to the Commission that:

(a) Canadian River Gas Company, a corporation organized and existing under the laws of the State of Delaware, engaged in the production, gathering, transportation, and distribution of natural gas, owns and operates a main transmission natural gas pipe line extending from gas fields in the Texas Panhandle, near Amarillo, Texas, to Clayton, New Mexico;

(b) Colorado-Interstate Gas Company, a corporation organized and existing under the laws of the State of Delaware, owns and operates a main transmission natural gas pipe line extending from Clayton, New Mexico, to the City of Denver, Colorado;

(c) Colorado-Wyoming Gas Company, a corporation organized and existing under the laws of the State of Delaware, owns and operates a main transmission natural gas pipe line extending from Littleton, Colorado, to Cheyenne, Wyoming;

(d) The main transmission natural gas pipe lines owned and operated by the Canadian River Gas Company, the Colorado-Interstate Gas Company, and Colorado-Wyoming Gas Company, as hereinbefore described, are so interconnected as to constitute, for the purposes of conducting an investigation, one continuous line extending from the Texas Panhandle, near Amarillo, Texas, to Cheyenne, Wyoming;

(e) Canadian River Gas Company, Colorado-Interstate Gas Company, and Colorado-Wyoming Gas Company are engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale for ultimate public consumption, for domestic, commercial, industrial, and other uses, and are, therefore, natural gas companies within the meaning of the Natural Gas Act;

(f) Pursuant to Section 4(c) of the Natural Gas Act and the Commission's Order No. 53, the Canadian River Gas Company on August 20, 1938, filed with the Commission its contracts and agreements covering the sale of natural gas to the Colorado-Interstate Gas Company and the Clayton Gas Company; the Colorado-Interstate Gas Company on August 19, 1938, filed with the Commission its contracts and agreements covering the sale of natural gas to the Public Service Company of Colorado, the Colorado-Wyoming Gas Company, the Pueblo Gas and Fuel Company, the City of Colorado Springs, the Citizens' Utilities Company, the Arkansas Valley Natural Gas Company, and the Natural Gas Pipe Line Company of America; the Colorado-Wyoming Gas Company on August 20, 1938, filed with the Commission its contracts and agreements with the Cheyenne Light, Fuel and Power Company;

(g) On December 22, 1938, the City and County of Denver, Colorado, a State Commission within the meaning of the Natural Gas Act, filed with the Commission a complaint (Docket No. G-118) alleging, among other things, that natural gas produced, gathered, and transported by the Canadian River Gas Company is delivered and sold to the Colorado-Interstate Gas Company; that this gas is transported, delivered, and sold by the Colorado-Interstate Gas Company to the Public Service Company of Colorado, a corporation organized and existing under the laws of the State of Colorado; that the Public Service Company of Colorado is a public utility engaged in the local distribution and sale of gas at retail to consumers in the City and County of Denver, Colorado, at rates which are greatly dependent upon the price paid by it to the Colorado-Interstate Gas Company; that the rates and charges for natural gas collected by the Colorado-Interstate Gas Company from the said Public Service Company of Colorado are unreasonable,

unjust, and discriminatory; that the Colorado-Interstate Gas Company sells natural gas at a much lower rate to other purchasers on both sides of the City gates of the City and County of Denver; said City and County of Denver petitions this Commission to investigate and determine the reasonable cost and charge for natural gas sold by the Colorado-Interstate Gas Company to the Public Service Company of Colorado at the Denver gate;

(h) On January 9, 1939, the Public Service Commission of the State of Wyoming, a State Commission within the meaning of the Natural Gas Act, filed with the Commission a petition (Docket No. G-121), reciting, among other things, that natural gas produced, gathered, and transported by the Canadian River Gas Company is delivered and sold to the Colorado-Interstate Gas Company; that this gas is transported, delivered, and sold by the Colorado-Interstate Gas Company to the Colorado-Wyoming Gas Company; that the Colorado-Wyoming Gas Company transports, delivers, and sells natural gas to the Cheyenne Light, Fuel and Power Company, which is a public utility engaged in the local distribution and sale of gas at retail to consumers in the City of Cheyenne, Wyoming; that the rates charged by the Cheyenne Light, Fuel and Power Company are dependent in a large measure upon prices which it pays to the Colorado-Wyoming Gas Company for natural gas; that the rates and charges for natural gas sold at the City gate by the Colorado-Wyoming Gas Company are unjust, unreasonable, and discriminatory, resulting in an excessively high cost to the consumers in the City of Cheyenne; that the said Public Service Commission of the State of Wyoming petitions this Commission to determine and fix a just and reasonable rate for gas sold to the Cheyenne Light, Fuel and Power Company at the City gates of Cheyenne, Wyoming;

Wherefore the Commission finds that:

It is necessary and proper, in the public interest, and to aid in the enforcement of the provisions of the Natural Gas Act, that an investigation be instituted by the Federal Power Commission, on its own motion, into and concerning all rates, charges, classifications, rules, regulations, practices, or contracts of the Canadian River Gas Company, Colorado-Interstate Gas Company, and Colorado-Wyoming Gas Company.

The Commission, on its own motion, orders that:

An investigation of the Canadian River Gas Company, Colorado-Interstate Gas Company, and Colorado-Wyoming Gas Company be and is hereby instituted for the purpose of enabling the Commission:

(1) To determine with respect to each of said companies whether in connection with any transportation or sale of natural gas subject to the jurisdiction of this Commission any rates, charges, or classifications demanded, observed, charged, or collected, or any rules, regulations, practices, or contracts affecting such rates, charges, or classifications are unjust, unreasonable, unduly discriminatory, or preferential; and

(2) If the Commission shall find that any such rates, charges, or classifications, rules, regulations, practices, or contracts are unjust, unreasonable, unduly discriminatory, or preferential, to determine and fix by appropriate order or orders just, reasonable, and non-discriminatory rates, charges, classifications, rules, regulations, practices, or contracts to be thereafter observed and enforced.

By the Commission.

LEON M. FUQUAY, Secretary.

Order of Consolidation for Purposes of Hearing.

September 13, 1940.

In the Matter of

Canadian River Gas Company, Colorado Interstate Gas Company and Colorado-Wyoming Gas Company. Docket No. G-124.

City and County of Denver, Colorado, Complainant v. Public Service Company of Colorado, et al. Defendants. Docket No. G-118.

Public Service Commission of Wyoming, Complainant v. Colorado-Wyoming Gas Company, et al, Defendants. Docket No. G-121.

It appearing to the Commission that:

(a) On December 22, 1938, the City and County of Denver, Colorado, a State Commission within the meaning of the Natural Gas Act, filed with the Commission a complaint (Docket No. G-118) alleging, among other matters, that natural gas produced and gathered in the State of Texas by the Canadian River Gas Company is transported by said company without the State of Texas and is then sold and delivered by it to its affiliate, the Colorado Interstate Gas Company, at a point near Clayton, New Mexico; that this gas is then transported by the Colorado Interstate Gas Company through the State of New Mexico and into the State of Colorado and that a large portion of such gas is then resold by said Colorado Interstate Gas Company to an affiliate, the Public Service Company of Colorado, at the City gate of Denver, Colorado; that the said Public Service Company of Colorado is a public utility engaged in the local distribution and sale of gas at retail to consumers in the City and County of Denver, Colorado, at rates which are greatly dependent upon the price paid by it to the Colorado Interstate Gas Company; that the rates and charges for natural gas collected by the Colorado Interstate Gas Company from the said Public Service Company of Colorado are unreasonable, unjust, and discriminatory; that the Colorado Interstate Gas Company sells natural gas at a much lower rate to other purchasers on both sides of the City gates of the City and County of Denver; and said City and County of Denver petitions this Commission to investigate and determine the reasonable cost and charge for natural gas sold by the Colorado Interstate Gas Company to the Public Service Company of Colorado at the Denver gate;

(b) On January 9, 1939, the Public Service Commission of the State of Wyoming, a State Commission within the meaning of the Natural Gas Act, filed with the Commission a petition (Docket No. G-121), reciting, among other things, that natural gas produced, gathered, and transported by the Canadian River Gas Company is delivered and sold by said company to the Colorado Interstate Gas Company; that this gas is then transported, sold and delivered by the Colorado Interstate Gas Company at Livingston, Colorado, to the Colorado-Wyoming Gas Company; that the Colorado-

Wyoming Gas Company transports such gas out of the State of Colorado and delivers and sells it at the City gate at Cheyenne, Wyoming, to the Cheyenne Light, Fuel and Power Company, a public utility engaged in the local distribution and sale of gas at retail to consumers in the said City of Cheyenne, Wyoming; that the rates charged by the Cheyenne Light, Fuel and Power Company are dependent in a large measure upon prices which it pays to the Colorado-Wyoming Gas Company for natural gas; that the rates and charges for natural gas sold at the City gate by the Colorado-Wyoming Gas Company are unjust, unreasonable, and discriminatory, resulting in an excessively high cost to the consumers in the City of Cheyenne; that the said Public Service Commission of the State of Wyoming petitions this Commission to determine and fix a just and reasonable rate for natural gas sold to the Cheyenne Light, Fuel and Power Company at the City gate of Cheyenne, Wyoming;

(c) On March 14, 1939, the Commission instituted an investigation (Docket No. G-124) of the Canadian River Gas Company, Colorado Interstate Gas Company and Colorado-Wyoming Gas Company, for the purpose of enabling the Commission (i) to determine with respect to each of said companies whether in connection with any transportation or sale of natural gas subject to the jurisdiction of this Commission any rates, charges, or classifications demanded, observed, charged or collected, or any rules, regulations, practices, or contracts affecting such rates, charges, or classifications are unjust, unreasonable, unduly discriminatory, or preferential; and (ii) if the Commission shall find that any such rates, charges, or classifications, rules, regulations, practices, or contracts are unjust, unreasonable, unduly discriminatory or preferential, to determine and fix by appropriate order or orders just, reasonable, and nondiscriminatory rates, charges, classifications, rules, regulations, practices, or contracts to be thereafter observed and enforced;

(d) Said order instituting an investigation was duly served upon the said Canadian River Gas Company, Colo-

rado Interstate Gas Company, and Colorado-Wyoming Gas Company;

The Commission orders that:

(A) Dockets Nos. G-118, G-121 and G-124 be and they are hereby consolidated for purposes of hearing thereon;

(B) A public hearing in these proceedings be held commencing on October 28, 1940, at 10 o'clock a. m. in the Circuit Court Room, Federal Building, in Denver, Colorado, and at said public hearing, pursuant to the provisions of Section 50.63 of the Provisional Rules of Practice and Regulations under the Natural Gas Act the order of procedure will be for the Canadian River Gas Company, the Colorado Interstate Gas Company and the Colorado-Wyoming Gas Company to open and close, and said opening shall consist in the presentation of their evidence relevant and material to the matters under the aforesaid investigation; and after said opening, the Federal Power Commission shall present its evidence, and thereafter, other participants may present their evidence; said order of procedure shall, however, be subject to such change or modification as the Examiner may find necessary or desirable;

(C) Interested State commissions may participate in the said hearing, as provided in Section 67.4 of the Provisional Rules of Practice and Regulations under the Natural Gas Act.

By the Commission.

LEON M. FUQUAY, Secretary.

Public Service Company of Colorado filed an answer (Document No. 3 in the Transcript of the Record), and entered its appearance (Transcript page 10) in the hearing before the Commission.

Opinion No. 73.

In the Matter of

Canadian River Gas Company, Colorado Interstate Gas Company and Colorado-Wyoming Gas Company. Docket No. G-124.

City and County of Denver, Colorado, Complainant v. Public Service Company of Colorado, et al, Defendants. Docket No. G-118.

Public Service Commission of Wyoming, Complainant v. Colorado-Wyoming Gas Company, et al, Defendants. Docket No. G-121.

By the Commission:

These proceedings are an outgrowth of an investigation instituted by the Commission on March 14, 1939, into the reasonableness of the rates and charges of the respondent companies, following the filing of petitions therefor by the City and County of Denver, Colorado, and by the Public Service Commission of Wyoming.

On April 12, 1939, Canadian River Gas Company[1] and Colorado Interstate Gas Company,[2] filed with the Commission an application for a rehearing and stay of said order of investigation; and on April 13, 1939, Colorado-Wyoming Gas Company[3] filed with the Commission a motion to set aside the same. On May 9, 1939, the Commission issued its order denying the application of the Canadian and Colorado Companies, and also entered a separate order denying the motion of the Wyoming Company.

On July 7, 1939, Canadian Company and Colorado Company filed their petition for review of the Commission's order of March 14, 1939, with the United States Circuit

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[1] Hereinafter sometimes referred to as "Canadian Company";

[2] Hereinafter sometimes referred to as "Colorado Company";

[3] Hereinafter sometimes referred to as "Wyoming Company."

Court of Appeals for the Tenth Circuit. The Commission thereupon filed its motion to dismiss the petition. The Circuit Court of Appeals, by its decision of March 4, 1940, directed a dismissal of the petition for review. The Companies' petition for rehearing was denied by the Court on July 24, 1940 (113 Fed. (2d) 1010); and certiorari was denied by the United States Supreme Court on October 28, 1940 (311 U. S. 693).

On September 13, 1940, the Commission consolidated these proceedings and ordered a public hearing to be held on October 28, 1940, in Denver, Colorado.

At the hearings, which consumed 102 hearing days, and closed on April 21, 1941, after one short recess, each of the respondent companies was afforded ample opportunity to and did present evidence. In addition, evidence was also offered by the City of Denver, Colorado, and by members of this Commission's staff. The transcript of the testimony in excess of 15,000 pages and over 300 exhibits clearly shows the extent and volume of the record.

Petition to Reopen Proceedings.

On March 11, 1942, Canadian and Colorado companies each filed a petition to reopen proceedings to take further evidence. Both petitions rely on the same general contentions for support. In the main these contentions are that taxes, wages and material costs have increased since the close of the proceedings and that additions to property have been greater than originally estimated. The Mayor of the City and County of Denver in a letter received March 17, 1942, and the Wyoming Public Service Commission in a telegram dated March 18, from its Chairman, have strenuously opposed granting of the petitions and the reopening of the proceedings. This Commission is fully aware of the recent trends in costs. It is also aware of the recent trends in revenues although no mention of revenues is made in the petitions. Due consideration has been given to these factors in the orders entered in these proceedings. That full account has been taken of the relevant contentions by the companies is apparent in the discussion of these factors in this opinion.

History and Operations of Companies.

The Canadian and Colorado Companies are separate corporate entities, but the properties of the two companies have, since their inception, been operated as a single enterprise. The incorporation of these two companies and the acquisition and construction of their properties were the result of a "Memorandum of Stipulations Agreed Upon Between Southwestern Development Company, Cities Service Company, and Standard Oil Company (N. J.)." The primary objectives of the undertaking were the production of natural gas in the Texas Panhandle field and its transportation to the city gate of Denver for sale to the Public Service Company of Colorado and for the supplying of natural gas to Colorado Fuel and Iron Corporation at Pueblo, Colorado, enroute to Denver. The obtaining of these two markets was the essential prerequisite of the construction of the Canadian Company-Colorado Company pipe line sometimes referred to as the "Denver" line.

As a part of its obligations under the aforesaid stipulation, Southwestern Development Company caused Canadian Company to be incorporated under the laws of the State of Delaware on February 24, 1928, with broad powers to carry on business in gas, oil and other extractive enterprises and qualified it to do business in the States of Texas, New Mexico, and Oklahoma. All of Canadian's capital stock, excepting directors' qualifying shares, was issued to Southwestern Development Company.

Also pursuant to the aforesaid stipulation, Colorado Company was incorporated under the laws of the State of Delaware on June 8, 1927, with broad powers to carry on business in natural gas, artificial gas, oils, and other extractive enterprises and qualified it to do business in the States of New Mexico, Oklahoma, and Colorado.

Canadian Company does not purchase any natural gas, but produces from its own wells all of its requirements. It holds gas rights under oil and gas leases on approximately 315,000 acres of land in the Texas Panhandle field and had in operation on December 31, 1939, a total of 94 gas wells.

Its gathering system consists of 144 miles of various sizes of pipe. It owns and operates a field compressing station near Fritch, Texas; the Bivins compressor station through which gas is transported to Clayton Junction approximately 35 miles north of the City of Amarillo, Texas; a gasoline extraction plant and a dehydration plant. The Canadian Company sells gas to the following affiliated companies: Amarillo Oil Company, Clayton Gas Company and Colorado Interstate Gas Company. Out of a total of about 46,000,000 MCF of gas sold for resale in 1939, approximately 41,000,000 MCF were sold to the Colorado Interstate Gas Company.

Canadian Company is engaged in the production, gathering, transportation, and sale of natural gas. It produces gas from its leaseholds in the Panhandle gas field in the State of Texas, gathers such gas in the field and after compressing it, (a) sells and transports in interstate commerce a portion of it through its main 22-inch transmission line, a distance of approximately 86 miles to a point in New Mexico known as Clayton Junction where the gas so transported is delivered to Colorado Company and to Clayton Gas Company, and (b) transports a portion of it through the facilities of Texoma Natural Gas Company to a point in Oklahoma known as Gray Junction where the gas so transported is also sold to Colorado Company.

The Canadian Company is obligated to supply the entire natural gas requirements of Colorado Company for a period of 20 years from and after the initial delivery of gas to Public Service Company of Colorado which was made on June 23, 1928, "and so long thereafter as seller has available for delivery to buyer hereunder quantities of natural gas which buyer determines are profitable for it to buy under the terms of this contract."

Construction of the main transmission line of Colorado Company was completed in June, 1928. The line begins at Clayton Junction, New Mexico, at the terminus of the transmission pipe line of the Canadian Company and extends in a northwesterly direction approximately 254 miles through New Mexico into the State of Colorado to the outskirts of the City of Denver, Colorado. The line con-

sists of 20-inch and 22-inch Dresser coupled steel pipe. Various laterals extend from the main line to customers of the company, including a 16-inch lateral to the plant of the Colorado Fuel and Iron Corporation near Pueblo, Colorado, and one near the terminus of the line at Denver, Colorado, for the purpose of making deliveries to Wyoming Company at a point near Littleton, Colorado. On December 31, 1939, Colorado Company owned and operated three compressing stations known as Clayton Station, Canyon Station, and Devine Station.

On October 15, 1931, Colorado Company and Natural Gas Pipeline Company of America entered into an agreement which provides for the sale by Colorado Company to the latter of 25 per cent of the total requirements of the latter company's pipe line having as its destination what is known as the "Chicago" market. The gas so purchased is produced by Canadian Company and transported from the field through the 24-inch main transmission line of Texoma Natural Gas Company (an affiliate of the Natural Gas Pipeline Company of America) from Fritch compressing station to Gray Junction, Oklahoma. Colorado Company does not own, lease, or operate any of the facilities utilized in connection with the delivery and sale of this gas.

The contract for the sale of gas to Wyoming Company was entered into October of 1929 and provides for the sale by Colorado Company to Wyoming Company of the latter's requirements of natural gas. The gas so purchased by Wyoming Company is transported by it through its transmission pipe line and resold to various industrials, public authorities, and distribution companies for resale in the States of Colorado and Wyoming.

The total volume of gas sold by the Colorado Company in 1939 was approximately 41,000,000 MCF. Of this total, about 20,000,000 MCF was sold to Natural Gas Pipeline Company of America. The two largest customers on the Denver line were Colorado Fuel and Iron Corporation, (about 7,000,000 MCF annually) and Public Service Company of Colorado, Denver city gate (about 6,000,000 MCF annually).

Wyoming Company was incorporated under the laws of

the State of Delaware in December of 1925 and is authorized to do business in the States of Colorado and Wyoming. The company's facilities consist of a natural gas transmission pipe line extending from a point near Littleton, Colorado, in a northerly direction and terminating at the city gate of Cheyenne, Wyoming, a distance of approximately 114 miles, as well as compressor stations and a number of laterals extending from the main line to various city gates and industrial plants in Colorado and Wyoming. At the inception of the project, natural gas was obtained from the Wellington gas field situated in Larimer County, Colorado. Until the latter part of the year 1929, its total requirements were obtained from this field. During the calendar year ending December 31, 1939, 98 percent of its total requirements were obtained from Colorado Company.

During the year 1939, Wyoming Company transported and sold a total of 2,860,000 MCF of natural gas. Of this total about 900,000 MCF was sold to its affiliate, Public Service Company of Colorado, for resale by that company through its distribution systems in a number of communities situated in northern Colorado. During the same year, Wyoming sold approximately 415,000 MCF to another affiliate, Cheyenne Light, Fuel and Power Company, for distribution in the City of Cheyenne. A total of 152,000 MCF[1] was sold for resale to the Greeley Gas and Fuel Company and Highway Gas Company. In addition to the above sales for resale, Wyoming Company, during the same period, sold a total of about 1,367,000 MCF[1] directly to ten industrial consumers located along its system in the State of Colorado and sold small quantities of gas to two United States Army posts.

Jurisdiction.

Canadian River and Colorado Interstate contend that they are not "natural-gas companies" within the meaning of the Natural Gas Act. The gist of these contentions has been considered before and rejected. Essentially, the contentions are: the business is private and not affected with a public interest; the contracts were entered into privately before the passage of the Natural Gas Act; and the companies have not held themselves out to serve the public

[1] At 14.4 lbs. plus 4 oz.

generally but engaged only in serving natural gas to a selected number of customers. In addition, Canadian River contends that so far as it is engaged in the production and gathering of natural gas, it is not subject to the jurisdiction of the Commission. Colorado-Wyoming concedes that its operations in selling gas in Wyoming which it receives at Littleton, Colorado, constitute it a "natural-gas company" under the Act, but it contends that the Commission has no jurisdiction over its transactions in Colorado.

The question of jurisdiction is one of fact and law. The facts are clear and admitted. All three companies are engaged in "the transportation of natural gas in interstate commerce" and in "the sale in interstate commerce of such gas for resale." It is clear therefore that the respondent companies are engaged in activities which make them natural-gas companies within the meaning of the Natural Gas Act.

In effect, respondents challenge the constitutionality of the Natural Gas Act on the grounds that it attempts the regulation of private business. The Commission is mindful of the fact that already in other cases, where similar contentions were made and similar circumstances existed, the courts have upheld the constitutionality of the act here involved.[1]

The particular contention of Canadian, that insofar as it is engaged in the production and gathering of natural gas it is not subject to the jurisdiction of the Commission, is unsound. Canadian's production and gathering operations are an integral part of its total operations, including transportation in interstate commerce and the sale of natural gas for resale in interstate commerce. Furthermore, Canadian's operations are an integral part of Colorado's operations and the two comprise a single operating system. The investigation of Canadian's production and gathering property and operations is indispensable in regulating

[1] Natural Gas Pipeline Company of America and Texoma Natural Gas Company v. Federal Power Commission and Illinois Commerce Commission, 120 Fed. (2d) 625 (C. C. A. 7th); Mississippi River Fuel Corporation v. Federal Power Commission, 121 Fed. (2d) 159 (C. C. A. 8th). See also Illinois Natural Gas Company v. Central Illinois Public Service Company and Illinois Commerce Commission (No. 100—October Term, 1941), 314 U. S. (decided January 5, 1942).

Canadian's rates and charges for the sale of natural gas in interstate commerce for resale and for the transportation of natural gas in interstate commerce.

The contention of Colorado-Wyoming is negatived by the decision in Illinois Natural Gas Company v. Central Illinois Public Service Company and Illinois Commerce Commission (No. 100, October Term, 1941), 314 U. S. ——, where the Supreme Court, in an extension case within the State of Illinois, said:

"In determining the scope of the federal power over the proposed extension of facilities and sale of gas it is unnecessary to scrutinize with meticulous care the physical characteristics of appellant's business, in order to ascertain whether, as the court below held, the interstate commerce involved in bringing the gas into the state ends before delivery to distributors. In any case the proposed extension of appellant's facilities is so intimately associated with the commerce and would so affect the volume moving into the state and distribution among the states as to be within the Congressional power to regulate those matters which materially affect interstate commerce, as well as the commerce itself." (Citing cases.)

Cost of Plant.

The record contains considerable evidence as to the cost and alleged value of the properties involved in the proceedings.

Canadian Company[1] and Colorado Company each introduced estimates of reproduction cost new less observed depreciation. They also introduced evidence as to the original cost of the property. Wyoming Company offered only "actual construction costs, less observed depreciation, plus working capital and additions to plant, now and immediately in course of construction." Commission staff restricted its plant studies to original cost and offered evidence of that character.

We have considered the estimates of reproduction cost new less observed depreciation submitted by the Canadian Company and the Colorado Company but conclude that they are too conjectural to have probative value, as they are

[1]Evidence confined to transmission facilities only.

not based upon established facts, and therefore, are subject to the vagaries of theories and imagination. We, therefore, turn to the evidence of original cost of the properties involved to determine whether it provides an adequate basis for the establishment of the proper rate base.

The properties are all of comparatively recent acquisition or construction. The accounting records have been sufficiently adequate and well maintained to permit a ready determination of all costs involved. The major portion of all cost of Canadian and Colorado Companies has been incurred since the adoption by these companies of an accounting system based on the Code of Accounts of the Pennsylvania Public Service Commission. Thus, the basic facts are clear and essentially undisputed. They represent the best and only reliable evidence as to property values. We find, therefore, in accordance with the provisions of Section 6 of the Natural Gas Act, and under the record in this proceeding, no necessity exists to consider other factors than original cost of the properties in service.

The differences between the amounts representing original cost claimed by the companies and allowed herein are all essentially differences in interpretation of the accounts or conclusions as to whether certain expenditures are legitimate items to be included in the cost of plant and hence in the rate base. A statement of the amounts claimed by each company and the amounts allowed herein follows:

	Original Cost (as of December 31, 1939)		
	Canadian Company	Colorado Company	Wyoming Company
Claimed by Company	$14,648,821	$14,670,749	$1,860,552[1]
Allowed herein	10,784,464	11,879,409	1,678,878
Difference	$ 3,864,357	$ 2,791,340	$ 181,674

The difference in the amounts above are large for the Canadian Company and the Colorado Company. However, they are accounted for principally by a comparatively few items,

[1]This figure is book cost. Company did not introduce an original cost study.

the decisions on which involve fundamental principles. These principles, which will be discussed later, relate to: (1) items formerly charged to expense (not through an accounting error) which the companies now seek to capitalize; (2) write-ups in plant accounts arising through transactions between affiliated interests; and (3) amounts paid to affiliated interests for entering into contracts. A few adjustments arise from a difference in determining the date when commercial operations first began and the balance of the items are comparatively minor adjustments and reclassifications.

A discussion of the principal items of difference between amounts claimed by the companies and those allowed herein follows.

Canadian Company

The difference of $3,864,357 between original cost claimed by Canadian Company ($14,648,821) and that allowed herein ($10,784,464) is composed of the following items:

(1)	Past expenses now capitalized	$ 129,032
(2)	Affiliated company profits	3,370,817
(3)	Interest during construction	366,507
(4)	Miscellaneous Adjustments	(1,999)
		$3,864,357

(1) Past Expenses now Capitalized. The amount of $129,032 represents an arbitrary adjustment for general construction cost—3½% for engineering and general and administrative overheads, plus 1% interest—on all net property additions from 1929 to 1939. It is the amount added to the book costs of the company to arrive at its claimed original cost. Whatever costs have been incurred for these purposes heretofore have been charged to operating expenses. The amount therefore represents reaccounting (not correction of an accounting error), for the charges were made in conformity with the established accounting policy of the Company in effect at the time.[1]

(2) Affiliated Company Profits. The total affiliated com-

[1]Peoples Gas Light and Coke Company v. Slattery, 373 Ill. 31 PUR (NS) 193, 206, 1939, and Los Angeles Gas and Electric Corporation, PUR 193 E. 317, 323.

pany profits of $3,370,817 are comprised of three items. First, a profit of $3,120,496 on the sale of property by Amarillo Oil Company to Canadian Company; second, a profit of $121,787 on the sale of property by Master Oil and Gas Company to Canadian Company; third, a profit of $128,534 on the sale of property by Mission Oil Company to Canadian Company through Amarillo Oil Company.

All these transactions represent payments by Canadian Company for properties acquired from affiliated interests in excess of their original cost. Amarillo Oil Company is 100% owned by Southwestern Development Company as is Canadian Company. Canadian Company paid Amarillo Oil Company $5,000,000 for its gas leaseholds and wells in the Texas Panhandle field. The original cost of these properties to Amarillo Oil Company was $1,879,504. In fact, the difference between these amounts, $3,120,496, or the "write-ups," was carried on the books of Canadian Company until 1939 as "appreciation."

Similarly, the transactions involving the second and third write-ups stated above were not at arm's length and prices paid for the properties exceeded the original cost to the party first devoting them to the public service by the amounts shown.

The principle involved which requires the elimination from property accounts of intercompany profits from transactions not at arm's length is so patent as to require no lengthy discussion. Any treatment which would permit the capitalization of such amounts would open the door to the renewal of past practices of the utility industry when properties were traded between affiliated interests at inflated prices with the expectation that the public would foot the bill.[1]

(3) Interest During Construction. The Company has recorded on its books a charge for "interest during construction" computed on the basis of a construction period extending from May 1, 1927, to October 31, 1928, and upon book costs including the amount of "write-ups" heretofore

[1]The Commission has steadfastly held such affiliated company profits will not be recognized. (Alabama Power Company, 1 F. P. C. R. 25, 39; Louisville Gas and Electric Company, 1 F. P. C. R. 130, 133; Northern States Power Company, 1 F. P. C. R. 329, 344.)

discussed.[1] Directing our discussion first to the construction period to be utilized for the purpose of the computation, we find that the project became available for commercial operation prior to the date fixed by Respondent. The record shows clearly that regular deliveries of natural gas to Colorado Fuel and Iron Corporation, Public Service Company of Colorado, at the Denver city gate, and others, commenced in the latter part of June 1928, and continued thereafter. Such fact has long been regarded as establishing definitely the beginning of commercial operations. We hold that the construction period ended July 1, 1928. Little discussion is required to dispose of the inclusion of "write-ups" in the book costs upon which "interest during construction" is charged.[2] It is obviously improper to attempt to build fictitious cost upon fictitious cost. Because of these two fundamental errors the books of the Company contain excessive charges for "interest during construction" in the amount of $366,507 and such amount is here disallowed.

(4) Miscellaneous Adjustments. The addition to plant of $1,999 is the net effect of a series of miscellaneous plant adjustments. No one of these adjustments is large, but they all represent accounting corrections or reclassifications that are necessary and proper.

In view of all the foregoing, the Commission finds that $10,784,464 is the original undepreciated cost of Canadian Company gas plant.

Colorado Company

The difference of $2,791,340 between original cost claimed by Colorado Company ($14,670,749) and that allowed herein ($11,879,409) is composed of three items:

(1)	Past expenses now capitalized	$ 440,050
(2)	Cost of contracts	2,352,940[2]
(3)	Miscellaneous Adjustments	(1,650)
		$2,791,340

[1] Item (2) supra.

[2] There is allowed in the rate base of Colorado Company the unamortized balance of a payment made to one Arthur K. Lee for certain contracts. The principal contract related to the sale of natural gas to the municipality of Colorado Springs, which contract was about to expire at the time of purchase. There is grave doubt as to the bona fides and propriety of the trans-

(1) This adjustment, $440,050, is similar to that made in connection with Canadian Company original cost and discussed hereinabove. It represents items previously charged to expense in accordance with good accounting principles. Therefore, a restatement of these items resulting in their inclusion as items of legitimate original cost cannot be allowed.

(2) The $2,352,940, consisting of two items ($2,000,000 and $352,940), represents the recorded value of stock payments made to Southwestern Development Company and to Cities Service Company for entering into contracts for the purchase of gas.

In order fully to understand these two items it is necessary to go back to the agreement which provided for the construction of the "Denver Line." This was a tri-partite agreement between the Southwestern Development Company, the Standard Oil Company (N.J.) and Cities Service Company. The salient features of the agreement important to this discussion were that Cities Service Company was to secure a satisfactory franchise in the City of Denver and, if successful, the corporation to be formed by Standard Oil Company (N.J.) (Colorado Company) was to sell natural gas to two subsidiaries of Cities Service—the Public Service Company of Colorado for distribution in Denver and to Pueblo Gas and Fuel Company for distribution in Pueblo, Colorado. Southwestern Development Company agreed to form a corporation (Canadian Company) for the purpose of acquiring the Amarillo Oil Company properties and to produce and transport the gas from the field to a point of connection with the transmission company (Colorado Company). Standard Oil Company (N.J.) agreed to form a corporation (Colorado Company) for the purpose of transporting the gas from point of delivery by Canadian Company to the above named and other markets. Pursuant to this agreement the Canadian Company and

action whereby Colorado Company acquired the contract. The record is inconclusive as to the necessity for making such an expenditure. Of the original amount of $236,666 the company has amortized $118,605 as of December 31, 1939. In view of the smallness of the item and the fact it will soon be completely amortized and thereby removed from the accounts, it is deemed preferable to allow it in the rate base rather than to reopen the record for further inquiry into its dubious nature.

Colorado Company came into being. The whole enterprise contemplated by the agreement became a reality.

Very strangely, it is now represented that Canadian Company refused to negotiate an agreement for the sale of gas by it to Colorado Company unless Colorado Company turned over to it 10,000 shares of preferred stock, having a total par value of $1,000,000, and 531,250 shares of no par common stock having a recorded value of $1,000,000. This $2,000,000 was recorded on the books of Colorado Company as cost of the gas purchase agreement. It is noted that the stock was actually issued to Canadian Company's nominee, the Southwestern Development Company.

The record clearly shows that the foregoing transaction resulted in an unjustified and fictitious increase of book cost of plant. In the tri-partite agreement the parent companies undertook to develop a mutually advantageous business enterprise by agreeing to create subsidiaries to carry the plan into effect. Pursuant thereto such subsidiaries were organized. It is now represented that one subsidiary, Canadian Company, refused to do what its parent had agreed upon unless it were paid $2,000,000. The Commission would be remiss in its duty if it required consumers to pay a return upon and amortize this payment.

The balance of the total amount of $2,352,940 is $352,940. This alleged cost is a result of issuing 187,500 shares of no par common stock to Cities Service Company, and is likewise no part of legitimate original cost. It is contended that this cost was incurred because Public Service Company of Colorado and Pueblo Gas and Fuel Company, subsidiaries of Cities Service Company, the latter a party to the tri-partite agreement, would not enter into purchase contracts without such payment being made to the parent company (Cities Service Company). The stock was issued to Cities Service Company but later, on December 29, 1931, Cities Service Company sold the stock to Public Service Company of Colorado for $10.00 a share, or $1,875,000.

(3) The addition to plant of $1,650, Miscellaneous Adjustments, is the net result of a number of minor reclassifications and corrections of accounting errors required by the record.

Wyoming Company

The difference, $42,236, between original cost claimed by the Wyoming Company of $1,721,114, and that allowed herein, $1,678,878, is comprised of the following items:

(1)	Interest capitalized on claimed non-utilized capacity	$27,475
(2)	Excessive interest during construction	7,574
(3)	Miscellaneous Adjustments	7,187
		$42,236

(1) This amount, $27,475, represents interest computed on a proportion of the total cost of the property south of Fort Collins, Colorado, estimated by the company to be in excess of that required to handle the business actually done during the period. This capitalization of a fictitious and arbitrary interest amount after the close of the construction period is clearly not justified. Interest ceases to be a cost of the original plant when commercial operations begin.

(2) This adjustment, $7,574, is necessary to restate interest during construction on the basis of simple interest at 6% per year applied to the adjusted monthly construction expenditures on each job for the period from the date of the initial expenditure to the date of operation or date ready for service.

(3) This total, $7,187, includes an adjustment of $5,715 for excessive construction overheads capitalized and $1,472 of miscellaneous adjustments, none of which can be treated as cost of plant.

Accrued and Annual Depletion, Depreciation and Amortization.

The determination of the annual allowances (annual expenses) for depletion, depreciation and amortization (sometimes referred to jointly as depreciation) and the accrued depreciation in the properties must be consistent. This is a simple statement of what should be regarded as a universal truth in the regulation of rates. It is so regarded by the overwhelming majority of regulatory authorities of the country, and by students and writers on the subject. It is

so regarded by sound business management outside of the utility rate case field.

But, the principle of consistency is flagrantly violated in the evidence introduced by the companies in this proceeding. The accrued depreciation used by the companies is based upon observed percent condition of the property, which in a large measure is merely observed deferred maintenance. (Accrued depletion as determined by Canadian Company is an exception. It is based on estimates of original and remaining reserves.) Under the observation theory a high observed percent condition and consequently a low existing accrued depreciation result for many items of plant right down to the instant before they suffer the breakdown or obsolescence requiring retirement.

However, even this theory, if carried out consistently, might be considered as having some elements of reasonableness. The small observed depreciation would find its counterpart in an equivalently small annual charge to operating expenses to cover the yearly added amount of observed depreciation. But, this is not done. Instead another theory is advanced by the companies as a basis for determining the annual charge to operating expenses. In determining expenses the physical aspects are neglected and the problem becomes one of determining the probable length of life of the enterprise—an economic aspect. The future always may be considered speculative and management can always be considered only reasonable if it conservatively judges the future. Thus, estimates of comparatively short life result. It then argues that the annual charges to expenses for depreciation (amortization of the investment) should be sufficient to amortize the remaining investment (cost new less observed depreciation) over the remaining short life of the enterprise. Thus, in calculating expenses, chargeable to the consumer, high depreciation charges are computed; in computing return to the company the opposite prevails, a small deduction from the cost of plant is computed.

The evidence of the Commission staff treats accrued and annual allowance for depreciation on a simple, consistent, and reasonable basis. It is the application of the service life principle. Property begins its inevitable march to re-

tirement the moment it is placed in service. Its total life in service can be reasonably estimated with due consideration given to such influencing factors as probable life of the enterprise, gas reserves, obsolescence and inadequacy. The annual charge to expenses should be the best possible measure of the total service value of that property used up in a year. The net accumulation of these annual charges is the best possible determination of the expired outlay, hence the best measure of the actual depreciation existing in the property as of that date.

In an attempt to justify the unreasonable inconsistency in method of determining annual and accrued depreciation, the companies argue that a distinction must be made before and after passage of the Natural Gas Act. This argument is without merit for depreciation accrues regardless of any statute. The companies, of course, accrued depreciation in their books prior to the passage of the Act. The reserve requirement deducted herein is far less than that actually accrued. A comparison of the book reserves for depreciation, with that used herein, as of December 31, 1939, follows:

	Depreciation Reserve—December 31, 1939		
	Canadian Company	Colorado Company	Wyoming Company
Per Books	$2,995,528	$4,994,352	$486,406
Per This Opinion	1,480,948	2,674,805	395,944

The above comparison clearly reveals that by adoption of the principles announced herein the reserve is less than the amounts now on the books of the companies. They are benefited to the extent of the differences.

Aside from the question of principles there remain two major questions which have a direct influence on both the accrued and annual depreciation. These are (1) natural gas reserves, and (2) probable length of life of the enterprise. The two questions are related and will be discussed jointly in the following section under "Gas Reserves."

Gas Reserves

Almost one-third of the 16,000 page record deals with testimony concerning the natural gas reserves in the Texas

Panhandle field and the remaining recoverable gas reserves of Canadian Company. For us to attempt specifically to discuss the many complex and involved questions pertaining to the remaining recoverable gas reserves of the field as a whole or of Canadian Company would serve only unduly to extend this opinion and cause to be treated at length a matter that, from the position it occupies in this proceeding, fails to warrant such extensive treatment. We have carefully considered all of the evidence of record and believe that the question can be resolved in relatively simple fashion.

Three estimates are of record for the field as a whole. The Company Witness Thompson gave it as his opinion that as of January 1, 1939, at an assumed abandonment pressure of 25 pounds, there could be recovered 9,532,027,596 MCF of gas at 16.4 pounds pressure base. The Company Witness Hughes gave it as his opinion that as of August 1, 1939, at an assumed abandonment pressure of 25 pounds, there could be recovered 8,840,132,111 MCF of gas at 16.4 pounds pressure. The Commission's staff Witness Hammer gave it as his opinion that as of August 1, 1939, at an assumed abandonment pressure of 25 pounds, there could be recovered 22,420,000,000 MCF of gas at 14.65 pounds pressure. In addition, the Witness Hammer upon the same basis estimates the recoverable reserve of Canadian Company to be 3,645,000,000 MCF.

We are convinced that, without adjustment, none of the foregoing estimates can be accepted as the amount of natural gas reasonably expected to be recovered from the Texas Panhandle field. It seems clear from the evidence that the Company's estimates are too low; the estimates of the Commission's staff too high. We reach that conclusion because estimates of the Company witnesses based on the "porosity sand thickness" method or "open flow" do not appear to have been founded on reliable or proper data. Further than that it appears that when adequate development of a field has been reached and satisfactory pressure and production data are available, such as is found to be the case in the Texas Panhandle field, the pressure decline method, when properly used, is to be desired over those methods used by the Company witnesses depending as they do solely upon matters of judgment.

The major criticisms made by Canadian Company of Commission staff estimates were: (1) the pressure decline method cannot be applied to the Texas Panhandle field, (2) the use of quadrants in applying the method was incorrect, (3) account was not taken of the migration of gas under Canadian's acreage, (4) a 25 pound abandonment pressure is too low, and (5) account was not taken of the early unmetered production in the field.

The pressure decline method is recognized as a satisfactory method of estimating gas reserves in a field that is depleted as much as 15% or more and where reliable pressure and production data are available. The Texas Panhandle field meets these qualifications. It is a well developed field and the pressure and production records maintained by the Texas Railroad Commission are adequate and satisfactory. The estimates of Canadian Company witnesses based on porosity, pay thicknesses and open flow were not founded on proper data and must be considered essentially unreliable.

The dispute concerning the accuracy of the mathematical result following the method used by Commission staff of dividing the entire field into quadrants and averaging these quadrants is not clearly resolved on the record. The Commission recognizes, however, that for the field as a whole the Commission staff arrives at an average of 15,400 MCF of remaining reserves per acre as compared with only 11,600 MCF of remaining reserves per acre under Canadian Company acreage. If the method of averaging of quadrants is incorrect, it certainly has favored the company position of lower reserves. The record shows that Canadian acreage is considered among the very best in the entire field.

The differences of opinion as to whether Commission staff estimate allowed for the migration of gas from Canadian Company acreage occupies considerable space on the record. The pressure decline method, theoretically, automatically accounts for any migration. If the iso-baric maps are properly drawn this factor is accounted for.

The Commission has considered Canadian Company's remaining criticisms of the Commission staff estimate, abandonment pressure and unmetered production. There are many factors which will influence the pressure at which

wells will be abandoned. The time of abandonment is so far in the future, however, that the answer at this time must be somewhat speculative. Similarly, any estimate of the amount of unmetered gas produced and wasted on the first years of the field must also be somewhat speculative.

After weighing all the pertinent facts of record and making due allowance for the criticisms of the estimate submitted by Commission staff, the Commission concludes that Canadian Company's remaining recoverable reserves, as of December 31, 1939, are not less than 2,800,000,000 MCF at 14.65 pounds pressure base and an abandonment pressure of approximately 50 pounds.

At the present and expected future rate of production of about 55,000,000 MCF a year, the 2,800,000,000 MCF of recoverable reserves will last 53 years. This determination, therefore, settles the last remaining question, that of the probable length of life of the enterprise. For purposes of applying the service life principle for depreciable property it is necessary to make certain that the life of the enterprise will exceed that of the longest life of any major unit of property. A life of 50 years, from 1928, or a remaining life, from December 31, 1939, of 38 years has been assigned to main line pipe. Thus, the remaining estimated 53 year life of reserves leaves an ample margin for a substantial increase in rate of production.

For purposes of depleting the cost of production plant the "production method" is used. Each MCF of gas produced carries with it a unit allowance for depletion expense. If the rate of production increases, the allowance for depletion increases proportionately. Thus, irrespective of the time within which the remaining reserves are used up, total investment in production facilities will be returned to the company in depletion expense allowances.

The Commission recognizes that an expected remaining life of 38 years for an extractive industry may be considered long. Canadian and Colorado Companies' contentions, however, that the business will be abandoned by 1956, or in 16 years from 1940, are not substantiated by any re-

liable evidence. The Commission takes note of the fact that the Texas Panhandle field and the adjacent Hugoton field are the largest known reservoirs of natural gas in the world. Natural-gas companies relying upon these fields, directly or indirectly, for their source of supply may be expected to continue in business for many years to come.

Parenthetically, it may be noted at this point that it makes little difference whether the service life principle based on the longer expected life, or the company's amortization principle based upon a 1956 expiration, is adopted. The net results as to excess earnings are substantially the same, provided consistency is maintained in computing the annual expense and the accrued depreciation and depletion reserve requirements. This result is a striking illustration of the fact that if consistency is followed in the treatment of accrued and annual depreciation or amortization reasonable results may be expected, almost irrespective of the method or theory adopted.

Conclusions as to Depreciation, Depletion and Amortization.

In view of the foregoing, the Commission adopts herein the service life principle for *determing* annual and accrued depreciation and the production method for determining annual and accrued depletion of production facilities, using 2,800,000,000 MCF as the remaining recoverable reserves as of December 31, 1939. No serious controversy arose over the estimated service lives used by the Commission staff for the various classes of property other than main line pipe.[1] These estimates stand as reasonable, and are adopted. Using these estimates of service lives, the 2,800,000,000 MCF of remaining recoverable reserves[2] and the plant costs adopted as set forth hereinabove, the following amounts

[1]The controversy on the estimated life of main line pipe was involved in the estimates of natural gas reserves and the remaining life of the enterprise.

[2]For purposes of depleting gas well construction costs the reserves under the wells, rather than those under the entire acreage were used. Based on the total 2,800,000,000 MCF these reserves were determined to be 1,724,000,000 MCF as of December 31, 1939. This is in accordance with the alternative method of depletion submitted in evidence by Commission staff.

are obtained as proper for annual depreciation, depletion and amortization expense and accrued depreciation, depletion and amortization.

	Canadian Company	Colorado Company	Wyoming Company
As of December 31, 1939			
Accrued Depletion	$ 653,681	$ —	$ —
Accrued Depreciation	1,480,948	2,674,805	395,944
Accrued Amortization	—	118,605	—
Total	$2,134,629	$2,793,410	$395,944
Year 1939			
Depletion Expense	$ 80,969	$ —	$ —
Depreciation Expense	157,774	268,305	38,280
Amortization Expense	—	13,890	—
Total	$ 238,743	$ 282,195	$ 38,280

The amortization shown above for Colorado Company covers the cost of the contract for the sale of gas to Colorado Springs. The amount of amortization accrued and the annual allowance are both in accordance with the present practice of Colorado Company in accounting for the total cost of $236,666.

Rate Base.

Two factors in addition to original cost and accrued depreciation must be considered before the rate base for each company can be determined. These are: (1) working capital and (2) allowance for property additions since December 31, 1939.

Working Capital

There is not a large difference between the working capital requirements determined by Commission staff and by the respective companies. Comparisons of these amounts are shown in the following table:

	Working Capital Requirements		
	Canadian Company	Colorado Company	Wyoming Company
Claimed by Company	$190,000	$120,000	$45,490
Commission Staff	150,738	109,065	16,235
Difference	$ 39,262	$ 10,935	$29,255

The differences shown are largely due to the inclusion by the companies of an allowance for minimum bank balances. These cash balances need not be provided for separately and were not included in the Commission staff estimates. The record is clear that delayed expense items, such as income taxes, provide ample funds for this purpose. Accordingly, the amounts determined as reasonable by Commission staff are adopted herein.

Property Additions

There is evidence in the record of probable future additions to plant for all three companies. A number of these additions, estimated at the time, have since been made. Allowance for these additions appears reasonable. Accordingly, an allowance for plant additions to December 31, 1941, is made herein. The allowances for the three companies are as follows:

	Additions Allowed 12/31/39 to 12/31/41
Canadian Company	$571,923
Colorado Company	337,000
Wyoming Company	78,813

It is contended that future additions beyond those of 1941 and as far as 1947 should be considered. At this time such probable future additions must still be considered speculative. Futhermore, in allowing the above additions without a concomitant deduction for additional depreciation and depletion reserves accumulated during the same years, the Commission is treating the companies more than fairly. The estimated reserve accruals for two years for

Colorado Company are larger than the above additions and Canadian Company's estimated reserve accruals for two years are almost as large as the above additions. For any long period of time reserve accruals will be larger than additions; hence the rate base would be lower if both items were considered. (After a natural-gas company has reached full commercial operations, the net investment—that is, cost less related reserves—tends to decrease with the lapse of time and with production.)

Contributions in Aid of Construction

Wyoming Company has on its books amounts, when properly classified, representing Contributions in Aid of Construction. The payments were made by customers for construction of certain facilities incident to service to such customers. The evidence is that the average balance of such amount was $12,183. The amount is no longer refundable. It represents no investment by Wyoming Company. Accordingly, the amount should be deducted from the plant costs here to be utilized as a rate base.

Going Value

The Wyoming Company contended that an amount of $175,000 should be added to cost of plant for going value. The amount is a judgment figure wholly unrelated to any costs or outlays. This Commission and regulatory agencies in general have consistently condemned the arbitrary additions to the rate base of such fictitious element of value. It is significant that neither Canadian Company nor Colorado Company introduced any such claim.

The amount claimed by Wyoming Company for going value is deemed unjustified and is not included in the rate base.

Conclusions as to Rate Bases.

There follows a summation of the rate base for each company based upon the conclusions reached herein as to each of the items involved.

	Canadian Company	Colorado Company	Wyoming Company
Original Cost as of Dec. 31, 1939	$10,784,464	$11,879,409	$1,678,878
Less: Accrued Depreciation, Depletion and Amortization	2,134,629	2,793,410	395,944
Depreciated Original Cost	$ 8,649,835	$ 9,085,999	$1,282,934
Plus Working Capital	150,738	109,065	16,235
Additions to Dec. 31, 1941	571,923	337,000	78,813
Less: Customer Contributions			(12,183)
Prudent Investment	$ 9,372,496	$ 9,532,064	$1,365,799

The Commission therefore adopts the foregoing prudent investment amounts as the rate base for each company.

Revenues and Expenses.

None of the companies offered in evidence a complete income statement for any period of its operations. Fragmentary sections thereof, such as revenues, operating expenses and taxes were presented separately, in numerous exhibits. Canadian Company's operating costs were stated in accordance with the terms of its contract with Colorado Company rather than on the basis of recognized principles of expense classification. Colorado Company showed revenues and expenses separately for the Denver line and the Texoma Natural Gas Company deliveries. Wyoming Company introduced an income statement but omitted therefrom all consideration of annual depreciation expense.

The only complete income statements are to be found in Commission staff exhibits. These exhibits contained a complete analysis covering each of the years, 1937, 1938 and 1939. Brief summary statements were also introduced for the twelve months ended September 30, 1940. A comparative analysis of these statements reveals little difference in the net operating results for 1939 compared with

either the three year average or the 12 months ended September 30, 1940.

The Commission is aware of the substantial increase in natural gas sales due to the country's war efforts. It also takes note of the increasing costs of operation. In the natural-gas industry, however, operating labor and materials are a comparatively small part of total costs. All factors considered, it may reasonably be expected that revenues will increase as rapidly, if not more rapidly, than costs for all three companies. Nevertheless, for purposes of this order, 1939 revenues and costs are considered to be representative of the relationship that will exist between these items in the immediate future. Prediction of future conditions, particularly under present emergency conditions, is beset with more than average difficulty. Use of 1939 figures, however, undoubtedly resolves most of the doubts as to future operation conditions in favor of the companies.

Operating revenues as reported by the companies and the staff are essentially in agreement. The staff adjusted revenues so as to state all deliverees and revenues on a calendar year basis. These adjustments are minor and are accepted as reasonable. The 1939 operating revenues adopted herein for each of the three companies follow:

	Operating Revenues 1939
Canadian Company	$2,393,387
Colorado Company	5,773,010
Wyoming Company	828,941

Depreciation and tax expenses will be considered along with operating expenses in the following discussion. The most important single item of expense concerning which a wide difference exists between Commission staff and each of the companies is the annual allowance for depreciation expense. This has been discussed fully hereinbefore and appropriate allowances determined.

Commission staff recommended a number of adjustments to operating expenses and taxes as found recorded on the books of the companies. In some cases they did

not adjust the items but suspended them for subsequent Commission decision. A brief discussion of the adjustments and suspensions found reasonable and adopted herein follows for each company.

Canadian Company

To the extent that any comparison is possible, there is only a small difference between operating expenses as shown in Canadian Company exhibits and as shown in Commission staff exhibits. But, as stated previously because of the fragmentary nature of Canadian Company's exhibits, it is necessary to deal with the Commission staff figures exclusively.

For 1939 Commission staff reported operating expenses, as adjusted, of $665,287 and before adjustments of $746,556. Almost the entire adjustments are concerned with residual operations expenses. With the exception of the adjustment of $11,722 in connection with the joint operations of the Texoma Natural Gas Company's Fritch gasoline plant and an item of $223 of non-recurring expense, the balance of the staff expense adjustments are found reasonable. Unless the balance of the adjustments are made, operating expenses are overstated by the amount thereof. As a result of the above changes to the staff adjusted amount of $665,287, operating expenses for 1939 are found to be $677,232.

A further deduction of $6,614 for delay rental expense is found necessary. This amount was included in expenses by Commission staff since an adjustment to the plant account was made of $151,591 for past delay rentals capitalized. This plant adjustment was not adopted herein and it is, therefore, necessary to deduct the amount of $6,614 from 1939 expenses. After deducting this amount, a balance of $670,618 is obtained for operating expenses.

To this amount for operating expenses of $670,618, two items must be added. First, exploration and development costs of $41,573 for 1939. Second, an allowance for rate case expense. Actual rate case expense for 1939 was suspended by Commission staff for Commission consideration. It is customary to amortize such expenses over a

period of 5 years, or more. Canadian Company in its exhibits claimed $41,000 a year for 5 years as necessary to cover its total costs. A close scrutiny of some of the rate case expenses might show certain expenditures as unreasonable charges against rate payers. For purposes of this order, however, the Commission adopts the full annual amount claimed by the company as well as the five year amortization period.

The addition of the above two items results in an amount of $753,191 as the 1939 operating expenses of Canadian Company, which amount is considered as reasonable.

The total taxes of Canadian Company for 1939, including Federal income taxes, were $177,162. Commission staff deducted an amount of $2,021 of Federal capital stock tax and suspended all Federal income tax of $66,403 for further consideration. The Commission staff deduction is not adopted and the suspension is also reinstated.

Commission staff suspended all Federal income taxes. This was done to call attention to the fact that a tax adjustment would be necessary if the Commission changed rates and, therefore, profits. The reduction in charges and consequent reduction in taxable income ordered hereinafter would result in a substantial decrease in income taxes at the 1939 rates. However, tax rates have increased over those of the past. Accordingly, the full amount of the 1939 income taxes of $66,403 are allowed herein and these together with increase in business are considered as fair estimates of the future as can now be made.

A summary of the operating revenue deductions for 1939 found proper and reasonable herein for Canadian Company follows:

Operation expense	$ 753,191
Depreciation expense	157,774
Depletion expense	80,969
Taxes	177,162
Total Revenue Deductions	$1,169,096

The deduction of this amount from the 1939 revenue of $2,393,387 leaves a balance of $1,224,291 as the 1939 income available for return.

Colorado Company

Again, for reasons hereinbefore set forth, it is necessary to deal exclusively with expenses as shown by Commission staff exhibits. Operating expenses, as adjusted, for 1939 were reported as $425,019, and before any adjustments, (but after reclassification to conform to the system of accounts), $432,643. These expenses are exclusive of the cost of purchased gas for 1939 of $2,112,951.

Commission staff adjustments to operating expenses consist chiefly of a deduction of $7,360 from transmission line maintenance. The evidence on record tends to support this deduction. However, for purposes of this order the operating expense of $432,643, as shown by the Colorado Company on its books, (reclassified) is adopted.

Adding to this operating expense of $432,643, and allowance for amortizing expenses in connection with these proceedings is considered reasonable. During 1939 Colorado Company reported expenses of $58,290 in connection with the rate case. These expenses were suspended by Commission staff for further consideration. In its evidence Colorado Company claimed an annual allowance of $43,000 for a five-year period to cover its total estimated expenses atributable to the rate case. This amount is accepted herein as the best estimate on record as to a proper allowance for rate case expense. The addition of this allowance to operating expenses of $432,643 results in a total allowance of $475,643.

Total taxes, including Federal and State income taxes, for 1939 were $637,641. Commission staff deducted an amount of $22,693, representing a portion of Federal capital stock tax as not properly includible in gas expense. Because of the general tax situation, the Commission allows this portion of capital stock tax as a proper charge.

Federal and State income taxes for 1939, included in the total taxes of $637,641, are $419,040. These income taxes were suspended by Commission staff for further consideration. For reasons given in discussing a similar item of expense of the Canadian Company, the item is allowed in full.

There is no controversy as to the 1939 actual cost of purchased gas for resale of $2,112,951.[1] This is the largest and predominating item of operating costs. The reasonableness of this charge made by Canadian Company is, of course, involved in this case. Any adjustment in Canadian Company rates and charges by order will result in an adjustment of this cost item.

A summary of the revenue reductions found proper and reasonable for the Colorado Company follows:

Operating expenses	$ 475,643
Cost of purchased gas	2,112,951
Depreciation expense	268,305
Amortization expense	13,890
Taxes	637,641
Total Revenue Deductions	$3,508,430

The deduction of this amount from the 1939 revenue of $5,773,010 leaves a balance of $2,264,580 as the 1939 income available for return.

Wyoming Company

Essentially the only difference between company and Commission staff statement of operating expenses is in the staff suspension of all rate case expense. During 1939, a total of $14,282 was reported as rate case expense. Wyoming Company's estimate of rate case expense for 1939, 1940 and 1941 totaled approximately $87,660. On the basis of amortizing this expense over a five-year period, an annual allowance of $17,500 is made.

Commission staff recommended deductions from operating expenses for 1939 of $2,579 are accepted. Included in this total is $1,657 representing expenditures for entertainment and donations not properly includible in operating expenses. The balance, $922, represents a series of minor adjustments.

Allowing the $17,500 for rate case expense and accepting the miscellaneous adjustments of $2,579 results in total

[1]Total gas purchased was $2,126,330. The difference, or $13,379, represents gas used in company operations and is included in operating expenses.

operating expenses for 1939 of $85,364. This amount is exclusive of the cost of purchased gas.

The 1939 cost of purchased gas, after adjustment to a calendar year basis, was $498,103. During the year the rate for purchased gas from Colorado Company increased from 20 cents per MCF to 22½ cents per MCF. The difference between the amount paid in 1939 and the cost for the full year 1939 on the 22½ cent rate is $23,120. Operating expenses have not been increased by this amount and need not be increased since the reasonableness of this 22½ cent rate of Colorado Company as well as its other rates for resale gas are under consideration in this proceeding. In the allocation of costs, discussed in the following section, appropriate consideration is given to this inter-relationship of revenues of the selling company and costs of the purchasing company.

As in the case of taxes for Canadian Company and Colorado Company, and for the same reasons set forth in the discussion thereof, Wyoming Company's actual taxes for the year 1939 are adopted herein. For 1939 the total taxes, including income taxes, were $57,106.

A summary of the operating revenue deductions for 1939 found proper and reasonable herein for Wyoming Company follows:

Operating expense	$ 85,364
Cost of gas purchased	498,103
Depreciation expense	38,280
Taxes	57,106
Total Revenue Deductions	$678,853

The deduction of this amount from the 1939 revenue of $828,941 leaves a balance of $150,088 as the 1939 income available for return.

Conclusions as to Income Available for Return.

For convenience, there follows a tabulation of the operating revenue, operating revenue deductions and resulting income available for return for the year 1939 for all companies:

	Canadian Company	Colorado Company	Wyoming Company
Operating Revenue	$2,393,387	$5,773,010	$828,941
Operating Revenue Deductions			
Operating expenses	$ 753,191	$ 475,643	$ 85,364
Cost of gas purchased		2,112,951	498,103
Depletion	80,969		
Depreciation	157,774	268,305	38,280
Amortization		13,890	
Taxes	177,162	637,641	57,106
Total Deductions	$1,169,096	$3,508,430	$678,853
Income available for return	$1,224,291	$2,264,580	$150,088

Rate of Return

There is no exact or fixed formula for determining a reasonable rate of return. In the final analysis the rate of return fixed must be the Commission's best judgment of what is fair, based on the evidence of record and guided by the basic facts required by law to be considered. These basic facts are best set forth in the opinion of the United States Supreme Court in Bluefield Waterworks & Improvement Company v. Public Service Commission of West Virginia, 262 U. S. 679. The requirements stated that consideration be given to the returns earned by like investments which are attended by corresponding risks and uncertainty in the same vicinity and over the same period of time are well known.

The record contains a great amount of testimony on rate of return. Four witnesses for the companies and one witness for Commission staff offered exhibits. Opinion of company witnesses indicates a fair rate of return to be not less than 8%. Evidence of Commission staff witness indicates a fair rate of return as not more than 6½%.

Commission staff exhibits contained complete and comprehensive studies of the history and trend of interest rates, stock yields, stability of earnings of public utilities and

other enterprises, general economic conditions and local conditions in the area of the market served. In addition, general statistics of the natural gas industry and present facts concerning the ownership, issuance, prices and yields of securities of natural gas pipe line companies, were introduced. Company witnesses relied primarily upon judgment or a far more limited study of financial experience of utilities, natural gas companies and other enterprises, both in the past and for the present. Nevertheless, the exhibits of practically all witnesses show that over-all returns are lower than before and that the returns being demanded by investors are among the lowest that have ever existed.

Canadian Company has a long-term, and essentially cost of service contract, with its affiliate, Colorado Company. Colorado and Wyoming Companies' sales are also principally to subsidiaries or affiliates and to stable markets. Colorado Company's principal industrial sale to Colorado Fuel and Iron Corporation is made to an affiliate. All these facts materially reduce basic business risks that might be present under other circumstances.

Parenthetically, one important difference exists between the circumstances in this case and in the Natural Gas Pipeline Company case. Due to the very large sales made to Colorado Fuel and Iron Corporation the proportion of Colorado's total industrial sales to its city gate sales for resale is very much larger than for Natural Gas Pipeline Company. Rates to such industrials are not subject to the jurisdiction of this Commission and are limited in a large measure by costs of competitive fuels, such as coal and oil. As it will be shown subsequently, a portion of the total earnings in excess of a fair rate of return of Colorado Company are properly allocable to these main line customers but no reduction in these rates is ordered. The amount of these earnings in excess of 6½% rate of return is approximately $131,000. If Colorado Company retains these earnings in excess of a 6½% rate of return on its sales to these customers, its rate of return on its entire business is increased to approximately 8% after placing into effect the reductions in rates ordered herein.

Evidence of record shows that the natural gas industry is now recognized as a major utility industry which has

passed its experimental and development period. It is now seasoned. Its securities are attractive to, and held in large amounts by institutional investors and recent financing has been at low interest rates. The Commission takes note of the fact that in 1940 Colorado Company refinanced its outstanding bonded indebtedness at an interest rate of 2¾%.

After consideration of all the testimony of record relating to the fixing of a fair rate of return, the Commission concludes that 6½%, on the bases herein found to be reasonable, is the maximum rate of return that can be considered fair in this case for all three companies.

The Supreme Court in its decision of March 16, 1942, in the case of Natural Gas Pipeline Company of America, et al. v. Federal Power Commission, fully supports this view.[1]

Conclusions as to Amount of Excessive Returns.

Application of this rate of return to the respective rate bases of each company as determined herein results in the amount of return considered as reasonable for each company. The following summary tabulation shows the rate base, income available for return, reasonable return (6½% on rate base) and excessive return for all three companies.

	Canadian Company	Colorado Company	Wyoming Company
1. Rate base	$9,375,000	$9,535,000	$1,366,000
2. Income available for return	1,224,291	2,264.580	150,088
3. 6½% on rate base	609,375	619,775	88,790
4. Excessive returns (2 minus 3)	614,916	1,644,805	61,298

[1]In its discussion of "Fair Rate of Return" in that case, the court states:

"'The Commission found that '6½ per cent is a fair annual rate of return upon the rate base allowed', which it had characterized as 'a generous allowance'. The courts are required to accept the Commission's findings if they are supported by substantial evidence. §19(b). We cannot say on this record that the Commission was bound to allow a higher rate.

* * * *

"The business is in the same position as other similar businesses with respect to increased taxation, inflation and costs of operation. Other factors such as credit risks, risks of technological changes, varying demands for product, relatively small labor requirements, and conversion of inventory into cash compare more favorably. After a full consideration of all of these factors and of expert testimony, the Commission concluded that the prescribed reduction in revenues was just and reasonable, and that the 6½% was a fair rate of return."

Allocation of Costs.

It is readily apparent that the foregoing determination of earnings in excess of a reasonable return, by Companies, is based upon all the components of a rate case; in effect at the time, specifically applicable to each of the Companies as separate operating entities. This has been necessary because there are present in the proceedings three separate and distinct rate cases.

However, to stop there is to ignore realities. The entire project, although involving facilities of three corporate entities, is, for all practical purposes, a single project now designed to produce, gather, transmit and sell natural gas from the Texas Panhandle field to consumers along the line as far north as Cheyenne, Wyoming. The operation of the project is such that it is impossible, for example, to alter the rates of Canadian Company without simultaneously affecting the reasonableness of the rates of Colorado Company. Likewise the rates of Colorado Company cannot be altered without affecting the rates of the Wyoming Company.

Accordingly, if the rate-payer is to receive all to which he is justly entitled, we are compelled to determine Colorado Company's proportionate share of the reduction ordered for Canadian Company in the sum of $614,916 and to cause that amount plus the excess earnings of Colorado Company in the sum of $1,644,805 to be passed on to its customers. In turn the rates of Wyoming Company must be revised downward to reflect the saving in gas purchased as a result of the foregoing plus its previously determined excess earnings in the amount of $61,298. The orders that we adopt will be designed to accomplish that result.

The Commission is aware that in an investigation such as this it is incumbent on it to determine the reasonableness or unreasonableness of the rates and charges subject to its jurisdiction. This requires that the total costs of operations, including depreciation, taxes and a fair return, be distributed among the various customers served, individually or by appropriate groups. To the extent that such costs allocated to sales under the Commissioner's jurisdiction are less than revenues received, the rates and charges made are

unjust and unreasonable, and revenues must be reduced accordingly.

It does not follow, from this obligation of the Commission, that an allocation of physical property or portions thereon, must be made, before any excessive returns are determined, as seems to be the contention of the companies. In fact, the fragmentary presentation by the companies of revenues and expenses particularly, is rooted in the attempt to make property allocations first and as a starting point for all subsequent exhibits and testimony. Nowhere in the entire evidence submitted by Canadian and Colorado Companies is there a complete presentation of the entire operations of the company broken down between jurisdictional and non-jurisdictional operations.

All that can be accomplished by an allocation of physical properties can be attained by allocating costs including the return. The latter method is by far the most practical and business-like.

Canadian and Colorado Companies submitted a number of so-called allocation studies. Each is premised on a different theory or principle, and starts with the Denver line as distinct from other operations. These theories varied from assuming a field price for gas as the prevailing market price, to the construction and operation of a separate line for city gate resale deliveries only. For the most part the assumptions made either do not square with realities or are patently unreasonable as applied to properties and operating conditions such as those concerned.

Commission staff exhibits on cost allocation followed principles that have long been recognized as reasonable in the public utility field and are widely accepted. Therein costs are divided essentially into two groups, fixed and variable. Fixed costs are largely joint costs which do not vary with volume of sales. The total amount of such costs are largely proportional to the maximum demand on the system or system capacity. Accordingly, these costs have been allocated basically in proportion to each customer's responsibility for the peak day demand. Variable costs are largely those that vary proportional to output or volume of sale. Accordingly, these costs have been allocated in proportion to volume of gas purchased by each customer.

The principles and methods of cost allocation presented by Commission staff are obviously the most appropriate and reasonable for Canadian and Colorado Companies. Applying the physical and operating data submitted in evidence by Commission staff to total costs for each company results in the allocations shown in the following table. The total cost of service for Colorado Company is the amount found reasonable herein except for purchased gas. The actual cost of gas purchased from Canadian Company of $2,126,000 is eliminated and there is substituted the proper allocated cost of $1,575,000. This is a reduction of $551,000. This amount added to the excess returns of $1,645,000, based on the present cost of gas, makes a total of $2,196,000 as the new excess earnings over 6½% rate of return.

Canadian Company.			
Customers	Revenue	Allocated Costs	Excess Revenue Over Costs
Colorado Company	$2,126,000	$1,575,000	$ 551,000
Clayton Gas Company	25,000	15,000	10,000
Amarillo Oil Company	205,000	152,000	53,000
Company Use	29,000	28,000	1,000
Total	$2,385,000	$1,770,000	$ 615,000
Miscellaneous Operating Revenues	8,000	8,000	—
Total	$2,393,000	$1,778,000	$ 615,000

Colorado Company.			
Customers	Revenue	Allocated Costs	Excess Revenue Over Costs
Direct Industrial Sales	$1,277,000	$1,162,000	$ 115,000
Sales to Public Authorities	49,000	33,000	16,000
Sales to Other Gas Utilities	3,062,000	1,652,000	1,410,000
Natural Gas Pipeline Company	1,376,000	721,000	655,000
Total	$5,764,000	$3,568,000	$2,196,000
Miscellaneous Operating Revenues	9,000	9,000	—
Total	$5,773,000	$3,577,000	$2,196,000

Canadian Company sales to Colorado Company and to Clayton Gas Company are made under rate schedules on file with the Commission, FPC Rate Schedules Nos. 1 and 2, respectively, and are under its jurisdiction. As indicated above, revenues from these sales exceed the costs of $561,000. Accordingly, the Commission finds the Canadian Company's rates and charges under its FPC Rate Schedules Nos. 1 and 2 unjust and unreasonable and by order hereinafter entered requires the company to reduce its rates and charges by that amount.

All Colorado Company sales classified as "Sales to Other Gas Utilities" and its sales to Natural Gas Pipeline Company are made under rate schedules on file with the Commission, and are under its jurisdiction. As indicated above, total revenues from these sales exceed costs by $2,065,000. A distribution of this total between resale customers and to Natural Gas Pipeline Company is shown in the attached Exhibit A. Accordingly, the Commission finds the Colorado Company's rates and charges under its Rate Schedules Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9 unjust and unreasonable and by order hereinafter entered requires the company to reduce these rates and charges by the amount of $2,065,000 annually.

Colorado-Wyoming Gas Company.

In preparing its allocation of costs for Wyoming Company, Commission staff departed from the use of the system peak day for allocating demand (fixed) costs and combined the separate class peaks of resale customers and of main line industrial customers. This method is commonly used, but under the particular circumstances surrounding the deliveries of gas to the industrial customers involved, a variation from that method as hereinafter set forth would be in keeping with the Company's operations. The Colorado Portland Cement Company, the principal main line industrial user, is curtailed regularly during system peak days. Its demand on the system peak day is, in our opinion, a proper measure of its proportionate share of demand costs than its highest off-peak demand. Accordingly, the principles and methods of cost allocation presented by Commission staff are adopted with the modification that the coincident demands of all customers on the system peak

day are used, and with exception of deliveries to Highway Gas Company.

Deliveries to Highway Gas Company are for all practical purposes an exchange of gas with Goodstein Pipeline Company. The total amount of revenue involved is less than $700 per year. In view of these facts no attempt was made to make a special cost study and costs have been assumed to equal revenues.

The total costs of Wyoming Company to be allocated are those found reasonable herein with the exception of the cost of purchased gas. As shown in Exhibit A attached, the charges made by Colorado Company to Wyoming Company exceed costs by $98,000. A reduction of this amount ordered herein reduces Wyoming Company's total costs (including return) from $768,000 to $670,000 and increases the amount of excess returns as shown in the previous section on "Rate of Return" from $61,000 to $159,000.

A summary of the results of this allocation of costs follows:

	Revenue	Allocated Costs	Excess Revenue Over Cost
Direct Industrial Sales	$ 236,000	$ 201,000	$ 35,000
Sales to Public Authorities	11,000	6,000	5,000
Sales to Other Gas Utilities	582,000	463,000	119,000
	$ 829,000	$ 670,000	$ 159,000

All Wyoming Company "Sales to Other Gas Utilities" are made under rate schedules on file with this Commission and are under its jurisdiction. As indicated above a total revenue from these sales exceed costs by $119,000. The balance of the excess revenues (allocated to other customers) is $40,000 which if not passed on in rate reductions will increase the overall rate of return earned by Wyoming Company from 6½% to approximately 9½%.

The amount of the reduction in charges determined above are materially dependent upon the reduction in charges of Colorado Company to Wyoming Company. The Commission

order entered herein grants Wyoming Company 30 days from and after the effective date of the new rates required to be filed by Colorado Company for the filing of its own ordered reduced rates.

The Commission finds Wyoming Company's rates and charges under its FPC Rate Schedule Nos. 1, 2, 3, 4, and 5 unjust and unreasonable and, by order hereinafter entered, requires the company to reduce these rates and charges by the amount of $119,000 annually.

Appropriate orders will be entered in conformity with this opinion.

Dated at Washington, D. C., this 18th day of March, 1942.

Exhibit A. Docket G-124. Opinion No. 73.
Colorado Interstate Gas Company
Allocated Cost of Service
Sales to Other Gas Utilities and to Pipe Line Companies 1939

Name of Customer	F.P.C. Rate Schedule No.	MCF at 14.65 Pounds	Revenue	Allocated Cost	Excess Revenue Over Cost	Average Revenue ¢/MCF	Average Cost ¢/MCF
Sales to Other Gas Utilities							
The Arkansas Valley Natural Gas Company	7	15,564	$ 3,000	$ 3,000	$ —	19.3	19.3
Citizens Utilities Company	4, 6, 9	181,017	68,000	44,000	24,000	37.6	24.3
City of Colorado Springs	5	805,981	213,000	107,000	106,000	26.4	13.3
Colorado-Wyoming Gas Company	3	2,867,649	495,000	397,000	98,000	17.3	13.8
The Pueblo Gas and Fuel Company	2	452,992	158,000	74,000	84,000	34.9	16.3
Public Service Company of Colorado	1	6,650,953	2,125,000	1,027,000	1,098,000	32.0	15.4
Total Other Gas Utilities		10,974,156	$3,062,000	$1,652,000	$1,410,000	27.9	15.1
Natural Gas Pipeline Company of America	8	20,367,632	1,376,000	721,000	655,000	6.8	3.5
Total		31,341,788	$4,438,000	$2,373,000	$2,065,000	—	—

Exhibit B. Docket G-124. Opinion No. 73.
Colorado-Wyoming Gas Company
Allocated Cost of Service
Sales to Other Gas Utilities 1939

Name of Customer	F.P.C. Rate Schedule No.	MCF at 14.65 Pounds	Revenue	Allocated Cost of Service	Excess Revenue Over Cost	Average Revenue ¢/MCF	Average Cost ¢/MCF
Cheyenne Light, Fuel and Power Co.	1; 2	414,807	$ 182,000	$ 124,000	$ 58,000	43.9	29.9
Public Service Company of Colorado	3	900,114	335,000	294,000	41,000	37.2	32.7
Greeley Gas and Fuel Co.	4	147,406	64,000	44,000	20,000	43.4	29.8
Highway Gas Company	5	4,649	700	700	—	15.1	15.1
Total		1,466,976	$ 581,700	$ 462,700	$ 119,000	39.7	31.5

Order Reducing Rates, Canadian River Gas Company.

Upon consideration of the orders previously issued in these proceedings, the evidence of record, the briefs and petition filed, and the Commission having on this date issued Opinion No. 73, which is hereby incorporated and made a part hereof;

The Commission finds that:

(1) The Canadian River Gas Company (hereinafter referred to as Canadian Company), a Delaware corporation, owns and operates facilities for the production, gathering, transportation and sale of natural gas for resale in interstate commerce, and is a "natural-gas company" within the meaning of the Natural Gas Act. It produces gas from its leaseholds in the Panhandle field in the State of Texas, gathers such gas in the field and, (a) transports a portion of it through its main 22" line a distance of approximately 86 miles to a point in New Mexico known as Clayton Junction where the gas so transported is sold for resale to Colorado Interstate Gas Company and Clayton Gas Company, and (b) transports a portion of it through the facilities of Texoma Natural Gas Company to a point in Oklahoma known as Gray Junction where the gas so transported is also sold for resale to Colorado Interstate Gas Company;

(2) A substantial portion of the natural gas sold to Colorado Interstate Gas Company (hereinafter referred to as Colorado Company) at Clayton Junction is transported by Colorado Company 254 miles to the environs of Denver, Colorado, for sale to Public Service Company of Colorado and to Colorado-Wyoming Gas Company; the entire system from the Panhandle field to Denver, Colorado, is operated as a single property and is commonly referred to as the "Denver Line." A substantial portion of the natural gas delivered at Gray Junction in Oklahoma is further transported through the facilities of Natural Gas Pipeline Company of America and Chicago District Pipeline Company to Chicago, Illinois;

(3) Natural gas sales to Colorado Company and to Clayton Gas Company are sales for resale in interstate commerce and are made under rate schedules on file with this Commission and designated as Canadian River Gas Company

FPC Rate Schedules Nos. 1 and 2, respectively. The rates and charges, demanded, observed, charged, and collected by Canadian Company for the transportation and sale of natural gas for resale under its FPC Rate Schedules Nos. 1 and 2, together with all rules, regulations, practices, and contracts, affecting such rates and charges, are subject to the jurisdiction of this Commission;

(4) The original undepreciated cost of Canadian Company's gas plant as of December 31, 1939, is $10,784,464;

(5) The remaining recoverable gas reserves of Canadian Company, as of December 31, 1939, are not less than 2,800,000,000 MCF at 14.65 pounds per square inch absolute pressure and an abandonment pressure of approximately 50 pounds per square inch; at the present and expected future rate of production these reserves will last in excess of 50 years;

(6) The production method is the most suited, for purposes of these proceedings, for determining annual and accrued (existing) depletion of gas leaseholds and gas well intangible costs; using the above determined recoverable gas reserves and the production method, an annual depletion expense of $80,969 and an accrued depletion, as of December 31, 1939, of $653,681 are determined as reasonable and proper;

(7) The service life principle is proper, for purposes of these proceedings, for determining annual and accrued (existing) depreciation of transmission facilities and all property other than gas leaseholds and gas well intangible costs; using this principle an annual depreciation expense of $157,774 and an accrued depreciation, as of December 31, 1939, of $1,480,948, are determined as reasonable and proper;

(8) The amount of $8,649,835 (original cost of $10,784,464 less accrued depletion of $653,681 and accrued depreciation of $1,480,948), is the depreciated original cost of Canadian Company's gas plant as of December 31, 1939;

(9) An allowance of $571,923 for additions to property from December 31, 1939, to December 31, 1941, and of $150,738 for working capital are sufficient and reasonable; these allowances added to the depreciated original cost

result in an amount of $9,372,496 (accepted as $9,375,000) as the proper prudent investment rate base upon which Canadian Company is entitled to earn a fair rate of return;

(10) An annual rate of return of 6½ percent on the rate base of $9,375,000, or $609,375 is a fair and reasonable return to Canadian Company;

(11) Reasonable and proper allowances for operating expenses, including an allowance for amortizing rate case expense over a five-year period, depletion, depreciation, and all taxes are as follows:

Operating expenses	$ 753,191
Depletion expense	80,969
Depreciation expense	157,774
Taxes	177,162
	$1,169,096

(12) The total allowable cost of all services of Canadian Company is $1,169,096 plus $609,375 for a fair return or $1,778,471; a proper allocation of this total cost and its relationship to revenues for 1939 for sales to Colorado Company, Clayton Gas Company, and all others follows:

Customer	Revenue	Allocated Costs	Excess Revenue Over Costs
Colorado Company	$2,126,000	$1,575,000	$ 551,000
Clayton Gas Company	25,000	15,000	10,000
All Other Sales	242,000	188,000	54,000
Total	$2,393,000	$1,778,000	$ 615,000

(13) Therefore, the rates and charges made, demanded, and received by Canadian Company for and in connection with the transmission and sale of natural gas for resale in interstate commerce to Colorado Company and Clayton Gas Company are unjust, unreasonable, and excessive to the extent of $561,000 per year;

(14) The rates and charges made, demanded, and received by Canadian Company, after reflecting the reductions hereinafter ordered, will be just and reasonable;

Therefore, the Commission orders that:

(A) The petition of Canadian River Gas Company to reopen these proceedings for the purpose of taking further evidence be and the same is denied;

(B) The rates and charges made, demanded, or received by Canadian River Gas Company for the transportation and sale of natural gas for resale to Colorado Interstate Gas Company under its FPC Rate Schedule No. 1 shall be reduced by not less than $551,000 per year;

(C) The rates and charges made, demanded, or received by Canadian River Gas Company for the transportation and sale of natural gas for resale to Clayton Gas Company under its FPC Rate Schedule No. 2 shall be reduced by not less than $10,000 per year;

(D) Canadian River Gas Company shall file on or before April 25, 1942, new schedules of rates and charges for or in connection with the transportation and sale of natural gas in interstate commerce for resale to reflect the reductions ordered in paragraphs (B) and (C) above, which new schedules of rates and charges shall be effective as to all bills regularly rendered on and after May 15, 1942;

(E) The Commission reserves the right to reject all or any part of such new schedules and in lieu thereof to prescribe the same by further order;

(F) On and after the effective date of the new schedules of rates and charges filed and made effective in accordance with paragraph (D) above, Canadian River Gas Company shall cease and desist from making, demanding, or receiving any rates and charges which do not reflect the reductions ordered in paragraphs (B) and (C) above.

Order Reducing Rates, Colorado Interstate Gas Company

Upon consideration of the orders previously issued in these proceedings, the evidence of record, the briefs and petition filed, and the Commission having on this date issued Opinion No. 73, which is hereby incorporated by reference and made a part hereof:

The Commission finds that:

(1) Colorado Interstate Gas Company (hereinafter referred to as Colorado Company), a Delaware corporation, owns and operates facilities for the transportation and sale of natural gas for resale in interstate commerce, and is a "natural-gas company" within the meaning of the Natural Gas Act. It transports gas from Clayton Junction, New Mexico, at the terminus of the transmission pipe line of Canadian River Gas Company (hereinafter referred to as Canadian Company), through its main line consisting of 20" and 22" steel pipe, a distance of 254 miles through New Mexico into the State of Colorado to the outskirts of the City of Denver, Colorado. Sales are made along the line to gas utilities and industrial customers and to Public Service Company of Colorado and Colorado-Wyoming Gas Company at the terminus of the line. Sales are made to the Natural Gas Pipeline Company of America at Gray Junction, Oklahoma, at the point of receipt of the natural gas from Canadian Company;

(2) The entire natural gas requirements of Colorado Company are obtained from its affiliate, Canadian Company; the systems of the two companies are operated as a single property;

(3) Natural gas sales to The Arkansas Valley Natural Gas Company, Citizens Utilities Company, City of Colorado Springs, Colorado-Wyoming Gas Company, The Pueblo Gas and Fuel Company, Public Service Company of Colorado, and Natural Gas Pipeline Company of America are made under rate schedules on file with this Commission and designated as Colorado Interstate Gas Company FPC Rate Schedules Nos. 1 to 9, inclusive. The rates and charges demanded, observed, charged, and collected by Colorado Company for the transportation and sale of natural gas for resale under FPC Rate Schedules Nos. 1 to 9, inclusive, together with all rules, regulations, practices, and contracts affecting such rates and charges, are subject to the jurisdiction of this Commission;

(4) The original undepreciated cost of Colorado Company's gas plant as of December 31, 1939, is $11,879,409;

(5) The amount of $2,874,805 for accrued depreciation in

the property of the Colorado Company as of December 31, 1939, is the best possible estimate of the actual depreciation as of that date and is reasonable. The amount of $118,605, being Colorado Company's accrued amortization as of December 31, 1939, for the cost of the Colorado Springs gas sales contract, is reasonable;

(6) The amount of $9,085,999 (original cost of $11,879,409 less accrued depreciation of $2,674,805 and accrued amortization of $118,605), is the depreciated original cost of Colorado Company's gas plant as of December 31, 1939;

(7) An allowance of $337,000 for additions to property from December 31, 1939, to December 31, 1941, and of $109,065 for working capital are sufficient and reasonable; these allowances added to the depreciated original cost result in an amount of $9,532,064 (accepted as $9,535,000), as the proper prudent investment rate base upon which Colorado Company is entitled to earn a fair rate of return;

(8) An annual rate of return of 6½ percent on the rate base of $9,535,000, or $619,775 is a fair and reasonable return to Colorado Company;

(9) Reasonable and proper allowance for operating expenses, including an allowance for amortizing rate case expenses over a five-year period, cost of purchased gas, depreciation, amortization and all taxes are as follows:

Operating expenses	$ 475,643
Cost of purchased gas	2,112,951
Depreciation expense	268,305
Amortization expense	13,890
Taxes	637,641
Total	$3,508,430

(10) By order entered in these proceedings, as of this date, against Canadian Company, the above cost of purchased gas has been reduced by $551,000 annually, thereby reducing the total in paragraph (9) above to $2,957,430;

(11) The total cost of all services of Colorado Company is the sum of the costs in paragraph (10) above of $2,957,430 and $619,775 for a fair return, or $3,577,205; of this total $2,373,000 is properly and reasonably allocated to sales made under FPC Rate Schedules Nos. 1 and 9, inclusive;

(12) The total revenues for 1939 under Rate Schedules Nos. 1 to 9, inclusive, of $4,438,000 exceed the allocated costs found reasonable herein by $2,065,000; the detail of this relationship of revenues to costs and the amount of excess for each purchaser is shown in Exhibit A attached to Opinion No. 73 and is made a part of this order by reference;

(13) Therefore, the rates and charges made, demanded, and received by Colorado Company for and in connection with the transmission and sale of natural gas for resale in interstate commerce to the gas utilities listed in paragraph (3) above are unjust, unreasonable and excessive to the extent of $2,065,000 per year;

(14) The rates and charges made, demanded, and received by Colorado Company, after reflecting the reduction hereinafter ordered, will be just and reasonable;

Therefore, the Commission orders that:

(A) The petition of Colorado Interstate Gas Company to reopen these proceedings for the purpose of taking further evidence be and the same is denied;

(B) The rates and charges made, demanded, or received by Colorado Interstate Gas Company for the transportation and sale of natural gas for resale in interstate commerce under its Rate Schedules FPC Nos. 1 to 9, inclusive, shall be reduced by not less than $2,065,000 per year;

(C) Colorado Interstate Gas Company shall file on or before April 25, 1942, new schedules of rates and charges for or in connection with the transportation and sale of natural gas in interstate commerce for resale to reflect the reductions ordered in paragraph (B) above, which new schedules of rates and charges shall be effective as to all bills regularly rendered on and after May 15, 1942;

(D) Commission reserves the right to reject all or any part of such new schedules and in lieu thereof to prescribe the same by further order;

(E) On and after the effective date of the new schedules of rates and charges filed and made effective in accordance with paragraph (C) above, Colorado Interstate Gas Company shall cease and desist from making, demanding, and

receiving any rates and charges which do not reflect the reductions ordered in paragraph (B) above.

Order Reducing Rates Colorado-Wyoming Gas Company

Upon consideration of the orders previously issued in these proceedings, the evidence of record, the briefs filed, and the Commission having on this date issued Opinion No. 73, which is hereby incorporated and made a part hereof;

The Commission finds that:

(1) The Colorado-Wyoming Gas Company (hereinafter referred to as Wyoming Company), a Delaware corporation, owns and operates facilities for the transportation and sale of natural gas in interstate commerce for resale, and is a "natural-gas company" within the meaning of the Natural Gas Act. It operates a natural gas transmission system from a point near Littleton, Colorado, at the terminus of the Colorado Interstate Gas Company line, and extending in a northerly direction 114 miles to the city gate of Cheyenne, Wyoming. Approximately 98 percent of its total gas requirements are obtained from Colorado Interstate Gas Company, and the balance from local fields. Sales are made along the line to gas utilities and industrial customers and to Cheyenne Light, Fuel and Power Company at the terminus of the line;

(2) Natural gas sales to Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, Greeley Gas and Fuel Company, and Highway Gas Company are made under rate schedules on file with this Commission and are designated Colorado-Wyoming Gas Company FPC Rate Schedules Nos. 1 to 5, inclusive. The rates and charges demanded, observed, charged, and collected by Wyoming Company for the transportation and sale of natural gas for resale under FPC Rate Schedules Nos. 1 to 5, inclusive, together with all rules, regulations, practices, and contracts affecting such rates and charges, are subject to the jurisdiction of this Commission;

(3) The original undepreciated cost of Wyoming Company's gas plant as of December 31, 1939, is $1,678,878;

(4) The amount of $395,944 for accrued depreciation in the property of the Wyoming Company as of December 31, 1939, is the best possible estimate of the actual depreciation as of that date and is reasonable;

(5) The amount of $1,282,934 (original cost of $1,678,878 less accrued depreciation of $395,944), is the depreciated original cost of Wyoming Company's gas plant as of December 31, 1939;

(6) An allowance of $78,813 for additions to property from December 31, 1939, to December 31, 1941, and $16,235 for working capital are sufficient and reasonable; these amounts added to the depreciated original cost, less $12,183 of contributions in aid of construction, result in an amount of $1,365,799 (accepted as $1,366,000) as the proper prudent investment rate base upon which Wyoming Company is entitled to earn a fair rate of return;

(7) An annual rate of return of 6½ percent on the rate base of $1,366,000, or $88,790 is a fair and reasonable return to Wyoming Company;

(8) Reasonable and proper allowances for operating expenses, including an allowance for amortizing rate case expenses over a five-year period, cost of purchased gas, depreciation and all taxes are as follows:

Operating expenses	$ 85,364
Cost of purchased gas	498,103
Depreciation expense	38,280
Taxes	57,106
Total	$678,853

(9) By order entered in these proceedings, as of this date, against Colorado Interstate Gas Company, the above cost of purchased gas has been reduced, effective on all bills rendered on and after May 15, 1942, by $98,000 annually, thereby reducing the above total to $580,853;

(10) The total cost of all services of Wyoming Company is the sum of $580,853, paragraph (9) above, and

$88,790 for a fair return, or $669,643; of this total $462,700 is properly and reasonably allocated to sales made under FPC Rate Schedules 1 to 5, inclusive;

(11) The total revenues for 1939 under Rate Schedules Nos. 1 to 5, inclusive, of $581,700 exceed the allocated costs found reasonable herein by $119,000; the detail of this relationship of revenues to costs and the amount of excess for each purchaser is shown in Exhibit B attached to Opinion No. 73 and is made a part of this order by reference;

(12) Therefore, the rates and charges made, demanded, and received by Wyoming Company for and in connection with the transmission and sale of natural gas for resale in interstate commerce to the gas utilities listed in paragraph (2) above are unjust, unreasonable and excessive to the extent of $119,000 per year;

(13) The rates and charges made, demanded, and received by Wyoming Company, after reflecting the reduction hereinafter ordered, will be just and reasonable;

Therefore, the Commission orders that:

(A) The rates and charges made, demanded, or received by Colorado-Wyoming Gas Company for the transportation and sale of natural gas for resale in interstate commerce under its Rate Schedules FPC Nos. 1 to 5, inclusive, shall be reduced by not less than $119,000 per year;

(B) Colorado-Wyoming Gas Company shall file on or before May 25, 1942, new schedules of rates and charges for or in connection with the transportation and sale of natural gas in interstate commerce for resale to reflect the reductions ordered in paragraph (A) above, which new schedules of rates and charges shall be effective as to all bills regularly rendered on and after June 15, 1942;

(C) Commission reserves the right to reject all or any part of such new schedules and in lieu thereof to prescribe the same by further order;

(D) On and after the effective date of the new schedules of rates and charges filed and made effective in accordance with paragraph (B) above, Colorado-Wyoming Gas Company shall cease and desist from making, demanding, and

receiving any rates and charges which do not reflect the reductions ordered in paragraph (A) above.

Petition of Colorado-Wyoming Gas Company for Rehearing, Reconsideration, Vacation and Modification of the Opinion and Order of the Commission Herein, Both of Date March 18, 1942.

Comes now Colorado-Wyoming Gas Company, one of the defendants above named, in compliance with the applicable rules and regulations of the Commission in that behalf, and hereby petitions for rehearing, reconsideration, correction, vacation and modification of the opinion herein and order pursuant thereto, as rendered and entered under date of March 18, 1942, in so far as the same relate to Colorado-Wyoming Gas Company. The sundry matters erroneously decided are specified and the errors made by the Commission are briefly stated in the Specifications of Error next following:

[Specifications of Error Nos. 1 to 59, inclusive, are identical with Specifications of Error Nos. 1 to 59, inclusive, appearing in the Petition for Review, supra, pages 5 to 19.]

60. Pending determination of this Petition, and in the event such Petition be denied by the Commission, then pending judicial review, Colorado-Wyoming Company, based on the record in this case, the practical necessities and equities of the situation, and the matters and things set forth in this Petition, prays that the operation of the opinion and order of the Commission of date March 18, 1942, be stayed and suspended pending such determination and review.

Respectfully submitted, this 16th day of April, 1942.

Opinion No. 73-A.

By The Commission:

At pages 2 to 3 in our Opinion No. 73 entered on March 18, 1942, disposition was made of the petitions of Canadian and of Colorado Interstate Companies, filed March 11, 1942, to reopen these proceedings.

However, in view of the claims asserted by the Companies, in petitions for rehearing and to reopen, filed April 14, 1942, as to increases in Federal income taxes for periods subsequent to the close of the hearing, it is deemed advisable to supplement our previous Opinion in more detail with respect to the position taken by the Companies therein.

The Companies allege that the Federal income and excess profits taxes, which they were required to pay in connection with operations for the year 1941, greatly exceed the amounts allowed by the Commission. Actually, as hereinafter shown, the taxes allowed by the Commission exceed the amounts which would have accrued in 1941 had the Companies' earnings been limited to a fair return for those years.

The fair return, that is the operating income, found reasonable, in our order, for Canadian Company amounts to $609,375.[1] To arrive at a base for calculating taxable income, this amount should be increased by income taxes allowed in computing the operating income, namely, $66,403,[2] and also by the annual amortization of rate case expenses allowed in the amount of $41,000,[3] which expenses are customarily deductible items for income tax purposes in the year paid rather than in the year amortized. From this total of $716,778 there should be deducted interest and the difference between other non-operating income and deductions, in the net sum of $417,431,[4] which is allowable for income tax purposes, but which is payable out of the fair return, and also an additional amount of $355,007[5] repre-

[1] Finding No. 10.

[2] Exhibit No. 163—Statement No. 1.

[3] Exhibit No. 163—Statement No. 2.

[4] Exhibit No. 168, page 1.

[5] Depreciation and depletion per books for 1939 and deducted in computing taxable income was $593,750 (Exhibit No. 168, page 1); that allowed as reasonable and proper in Finding No. 11 was $238,743.

senting depreciation and depletion deductible for income tax purposes, in excess of that allowed by the Commission. The total of these two latter deductions exceeds the aforesaid amount of $716,778.

If Canadian Company had been limited in 1941 to a return of $609,375, which was found to be a fair and reasonable return,[6] it would have had no net taxable income and would not have been obligated to pay any Federal income tax for that year. Therefore, the amount of $66,403 for 1939 Federal income taxes, allowed in Finding No. 11 as a reasonable item of operating expense, was ample.

The fair return allowed Colorado Company amounts to $619,775,[7] to which should be added income taxes allowed in Finding No. 9 in the amount of $391,526,[8] amortization of rate case expenses in the sum of $43,000[9] and the excess of "Other Income" over "Income Deductions," in the sum of $95,454,[10] giving a total maximum taxable income of $1,149,755. The normal income and surtaxes of 31 per cent[11] applied to the foregoing figure would disclose a tax liability of $356,424, as against the $391,526 allowed in our order. Furthermore, the amount of Colorado Company's taxable income will be smaller than $1,149,755, inasmuch as the said company has been deducting for income tax purposes approximately $272,000 more for depreciation and amortization than was allowed in determining a fair return.[12] Giving recognition to these additional deductions would reduce the tax, at the rate of 31 per cent, to approximately $272,039, as compared with the $391,526 heretofore allowed.

[6] Finding No. 10.

[7] Finding No. 8.

[8] Exhibit No. 140, page 118.

[9] Opinion 73, page 45.

[10] Exhibit No. 140, page 1.

[11] Under the Revenue Act of 1941, the effect of the application of the several brackets of normal surtax rates is to provide a combined normal and surtax rate fractionally less than 31 per cent; however, for convenience, the computation herein is based upon a 31 per cent rate and represents the maximum income and surtax rates under said Act.

[12] The depreciation deducted for income tax purposes in the year 1939 in the amount of $422,869, together with the amortization of contracts and franchises, deductible for income tax purposes, in the amount of $131,537, or a total of $554,406 (Exhibit 170-A), exceed the depreciation and amortization, totalling $282,195 (See p. 34 of Op., and Finding No. 9 of Order), by the amount of $272,211.

Accordingly, if Colorado Company had been limited in 1941 to a return of $619,775, which was found to be a fair and reasonable return,[13] the total Federal income tax which it would have been obligated to pay on its taxable net income for that year would have been approximately $119,000 less than the amount of $391,526[14] allowed as an operating expense. The Commission's allowance therefore was ample.

The reductions heretofore ordered will eliminate excess earnings and will also eliminate any liability for claimed excess profits tax. Among other things, the excess profits tax is based upon excess earnings of the taxable year, as compared with the four-year base period, namely, the years 1936 to 1939. The Companies' earnings for these years[15] were substantially in excess of those allowed as reasonable in our orders herein. As stated at page 39 of our Opinion, a comparative analysis of the Companies' income statements for each of the years 1937, 1938 and 1939, as well as for the 12 months ended September 30, 1940, "reveals little differences in the net operating results for 1939 compared with either the three-year average or the 12 months ended September 30, 1940." The ordered reduction in rates in these proceedings will eliminate the Companies' excess income. Their income from operations under the said Orders will be below, rather than above, the 1936 to 1939 average.

The proceedings herein originated with the filing of a complaint by the City and County of Denver, Colorado, in December, 1938. Extended hearings have been had and a record made comprising some sixteen thousand pages of transcript of testimony and 316 exhibits. As stated in our main Opinion, ample opportunity was afforded the parties to fully present their evidence. At the time of the close of the hearing in April, 1941, this Nation's defense program with its incident economic problems had been in progress for a number of months and evidence in the record as to that fact was given its due weight.

In Canadian and Colorado Companies' petitions to reopen these proceedings, isolated items of claimed increase of cost of operations are asserted, but no allegations are made as

[13] Finding No. 8.
[14] Exhibit No. 140, page 118.
[15] Exhibit 185.

to either the gross or the net operating revenues realized by the Companies for the year 1941 and the period subsequent thereto; and no allegations are made as to the manner or the amount in which said revenues differ from those utilized by the Commission in its Orders and which the Commission considered productive of the fair return allowed in such orders; nor are the claimed increased costs applied to such operating revenues so as to indicate in what manner or amount the changed economic conditions affect the Companies' fair returns. No allegations of this nature are made by the Companies, either as to operations under existing rates or as to operations that would obtain if the ordered reductions were made effective.

The aforesaid matters are in further explanation of the reasons set forth in our Opinion No. 73 for denying the Companies' petitions to reopen these proceedings, and do not in any manner modify or change the finding and ordering clauses of the Orders of March 18, 1942, which Findings and Orders are predicated upon the record made herein

Orders denying Canadian and Colorado Companies' petitions for rehearing and to reopen will be entered. An order denying Colorado-Wyoming Compan's petition for rehearing will be entered.

Dated at Washington, D. C., this 13th day of May 1942.

Order Denying Petition for Rehearing and to Reopen.

Upon consideration of the petition of Canadian River Gas Company filed April 14, 1942, for rehearing with respect to the Commission's order reducing rates of said Company entered on March 18, 1942, and the Commission's Opinion No. 73, and to reopen the said proceedings; and upon further consideration of all previous orders in this proceeding, the evidence adduced of record, the briefs and other documents filed, and having on this date made and entered its Opinion No. 73-A, which is incorporated by reference as a part hereof, adhering to its Opinion No. 73 and its order of March 18, 1942;

The Commission finds that:

No new facts have been presented or alleged in the

petition for rehearing and to reopen which would justify a reversal or revision of the Commission's said order and said Opinion No. 73, entered March 18, 1942, and no principles of law are stated in the said petition for rehearing and to reopen which were not fully considered by the Commission before it rendered said order and said Opinion:

Now, therefore, the Commission orders that:

The petition for rehearing and to reopen be and it is hereby denied.

Order Denying Petition for Rehearing and to Reopen.

Upon consideration of the petition of Colorado Interstate Gas Company filed April 14, 1942, for rehearing with respect to the Commission's order reducing rates of said Company entered on March 18, 1942, and the Commission's Opinion No. 73, and to reopen the said proceedings; and upon further consideration of all previous orders in this proceeding, the evidence adduced of record, the briefs and other documents filed, and having on this date made and entered its Opinion No. 73-A, which is incorporated by reference as a part hereof, adhering to its Opinion No. 73 and its order of March 18, 1942;

The Commission finds that:

No new facts have been presented or alleged in the petition for rehearing and to reopen which would justify a reversal or revision of the Commission's said order and said Opinion No. 73, entered March 18, 1942, and no principles of law are stated in the said petition for rehearing and to reopen which were not fully considered by the Commission before it rendered said order and said Opinion:

Now, therefore, the Commission orders that:

The petition for rehearing and to reopen be and it is hereby denied.

Order Denying Petition for Rehearing and Stay.

Upon consideration of the petition of Colorado-Wyoming Gas Company filed April 20, 1942, for rehearing and stay

with respect to the Commission's order reducing rates of said Company entered on March 18, 1942, and the Commission's Opinion No. 73; and upon further consideration of all previous orders in this proceeding, the evidence adduced of record, the briefs and other documents filed, and having on this date made and entered its Opinion No. 73-A, which is incorporated by reference as a part hereof, adhering to its Opinion No. 73 and its order of March 18, 1942;

The Commission finds that:

No new facts have been presented or alleged in the petition for rehearing which would justify a reversal or revision of the Commission's said order and said Opinion No. 73, entered March 18, 1942, and no principles of law are stated in said petition for rehearing and stay which were not fully considered by the Commission before it rendered said order and said Opinion;

Now, therefore, the Commission orders that:

The petition for rehearing and stay be and and it is hereby denied.

DESIGNATED PORTIONS OF TRANSCRIPT OF THE TESTIMONY AND EXHIBITS HEREIN, AND OF PRINTED "ABSTRACT OF THE EVIDENCE" BEFORE THE FEDERAL POWER COMMISSION, RELATING TO TESTIMONY, EXHIBITS AND OTHER PROCEEDINGS OF AND BEFORE FEDERAL POWER COMMISSION.

History, Development and Current Operations of Colorado-Wyoming Company.

James V. O'Connor called as a witness by and on behalf of the Federal Power Commission, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Lange:

Q. Please state your name.
A. James V. O'Connor.

Q. Where do you live?
A. I reside in Denver, Colorado.
Q. By whom are you presently employed?
A. The Federal Power Commission.
Q. How long have you been so employed?
A. Since September 1934.
Q. In what capacity?
A. An engineer at the present time, a gas engineer.
Q. Mr. O'Connor, will you for the record briefly state your qualifications in connection with the work in which you are in charge?

A. I was graduated from the Massachusetts Institute of Technology in 1923 with the degree of Bachelor of Science in Mechanical Engineering. In 1927 and 1928 I attended the night session of the Graduate School of Business Administration of New York University.

From 1923 to 1928 I was employed by the Brooklyn Edison Company. My work with this company included making acceptance tests on steam power plant equipment; tests and studies to improve the performance of such equipment; development of improved plant operating methods; preparation of schedules for the coordinated operation of the company's generating plants with the plants of interconnected companies to reduce capital and operating costs; analysis of the operations of the company and other large electric companies; inventory of property, perparation of forecasts of power sales, output, and demands; and miscellaneous tests, investigations, studies, and reports on sundry operating problems.

From 1929 to 1934, I was employed by the American Gas Association. My work with the Association included the collection, compilation and analysis of reports filed by manufactured and natural gas companies; the preparation of reports on the production, transportation, distribution and sale of gas, the operations of gas companies, and the revenues, expenses, income and investment of reporting companies; preparation of economic and engineering data for use of committees of the Association investigating various problems of the gas industry; preparation of sundry data for, or in cooperation with, Government agencies, gas utilities, and others.

From 1934 to 1940 I have been employed by the Federal Power Commission. Until 1938 my work was concerned primarily with the electric utility industry, and since that year, with natural gas companies. My work with the Commission has included studies on various matters including operation of natural gas and electric companies, rates, contracts, and related matters.

Q. Mr. O'Connor, have you had occasion in connection with your work with the Federal Power Commission to look into the matters involved in the investigaton of the Canadian River Gas Company, the Colorado Interstate Gas Company, and Colorado-Wyoming Gas Company?

A. I have.

Q. When did you first begin your work in connection with that investigation?

A. March 15, 1939.

Q. March 15, 1939?

A. Yes.

Q. Have you been employed in that work ever since then?

A. I have.

Q. Did you in connection with that work have opportunity to go over the company's physical properties personally or to view them?

A. I did.

Q. That is with reference to all three of the companies?

A. That is right.

Q. Did you in connection with that work have occasion to prepare or supervise the preparation of any maps showing the physical facilities employed by these companies in their operation?

A. I did.

Mr. Lange: I will ask the reporter to please mark this map for identification.

The Trial Examiner: It will be marked for indentification as Exhibit No. 44.

(Exhibit 44, Witness O'Connor, marked for identification.)

By Mr. Lange:

Q. Mr. O'Connor, this map which has just been identified as Exhibit No. 44, is the map that was prepared under your direction and supervision?

A. That is right.

Q. Will you please explain what that map represents?

A. I have a written statement here.

Q. Will you please read that statement?

A. Yes.

(Reading)—Exhibit No. 44 is a map entitled "General Map of the Pipeline Systems of Canadian River Gas Company, Colorado Interstate Gas Company and Colorado-Wyoming Gas Company and Portions of the Systems of other Major Pipe-line Companies Taking Gas from the Texas Panhandle and Hugoton Gas Fields."

This map was prepared under my supervision. For the three companies under investigation in this proceeding, Canadian River Gas Company, Colorado Interstate Gas Company, and Colorado-Wyoming Gas Company, the information shown on the map is based on maps filed with the Commission under Order No. 51, and more detailed maps supplied by the companies to the Commission's engineers during the investigation. The information shown on the map for Amarillo Oil Company, Panhandle Pipe Line Company, West Texas Gas Company, Central Gas Utilities Company, Texoma Natural Gas Company, and Natural Gas Pipeline Company of America is based on maps filed by those companies with the Commission under its Order No. 51. The transmission facilities of all the companies just mentioned are shown diagrammatically but approximately to scale as to their location.

In addition, the map shows diagrammatically, for general information, the approximate point of beginning and general direction of the transmission lines of a number of large pipe line companies which originate in the same general area as the lines of the preceding companies. These companies include Cities Service Gas Company, Consolidated Gas Utilities Corporation, Lone Star Gas Company, United Gas Pipe Line Company, Northern Natural Gas Company, and Panhandle Eastern Pipe Line Company. All these companies take gas from the general area known

as the Texas Panhandle Field. Part of the transmission systems of the last two named companies, Northern Natural Gas Company and Panhandle Eastern Pipe Line Company, originates in the southwestern part of Kansas, in the area generally referred to as the Hugoton Field.

The purpose of this exhibit is to show the location of the gas transmission facilities of the three companies under investigation in this proceeding and of other companies which transport gas produced by Canadian River Gas Company, and also the relative location of the lines of all the aforesaid companies to other important pipe line companies owning gas transmission facilities in the same general area.

The map shows state and county lines. It also shows the location of the transmission facilities of Canadian River Gas Company, Colorado Interstate Gas Company and Colorado-Wyoming Gas Company, and their points of interconnection with each other and with other parties, for the purchase and receipt, and for the delivery and sale of, natural gas.

The transmission line of Canadian River Gas Company begins at a point in Moore County and extends in a northwesterly direction through the counties of Hartley and Dallam, Texas, into Union County, New Mexico, and crosses the Texas-New Mexico state line at the boundary of Dallam County, Texas and Union County, New Mexico. In addition, the location of various branch or lateral lines and other facilities of Canadian River Gas Company are shown on the map.

The main transmission line of Colorado Interstate Gas Company begins at the terminus of the transmission line of Canadian River Gas Company and extends in a northwesterly direction through Union County, New Mexico, across the New Mexico-Colorado state line, and through Las Animas, Pueblo, El Paso, Douglas, and Arapahoe counties, Colorado. The map also shows the location of the 10-inch lateral line to Arapahoe Measuring Station near Littleton, Colorado, as well as other lateral lines and facilities of Colorado Interstate Gas Company.

The main transmission line of Colorado-Wyoming Gas Company begins at the Arapahoe Measuring Station of Colorado Interstate Gas Company and extends in a general northerly direction through Arapahoe, Jefferson, Boulder, Larimer, and Weld counties, Colorado, across the Colorado-Wyoming state line into Laramie County, Wyoming, terminating at Cheyenne. The map also shows the line through which the company receives gas from the Goodstein Pipe Line Company that has been produced in the Berthoud, Colorado field. In addition, the various branch or lateral lines are indicated on the map.

Gas produced by Canadian River Gas Company in the Texas Panhandle Field is transmitted through its main transmission line, across the Texas-New Mexico state line, to the junction with the main transmission line of Colorado Interstate Gas Company in Union County, New Mexico. The gas is then transmitted by the Colorado Interstate Gas Company through its main transmission line across the New Mexico-Colorado state line to the junction with the main transmission line of Colorado-Wyoming Gas Company in Arapahoe County, Colorado. The gas is then transmitted through the main transmission line of Colorado-Wyoming Gas Company across the Colorado-Wyoming state line to Cheyenne, Wyoming. Gas produced in the Texas Panhandle Field by Canadian River Gas Company flows in a continuous stream through the transmission lines of Canadian River Gas Company, Colorado Interstate Gas Company, and Colorado-Wyoming Gas Company, from Texas, through New Mexico and Colorado, into Wyoming. Gas is also delivered from this stream to various points in Texas, New Mexico, Colorado and Wyoming, for resale for ultimate public consumption.

The map also shows the transmission lines of Amarillo Oil Company and Panhandle Pipe Line Company, which extend from wells of Canadian River Gas Company in the Texas Panhandle Field to Amarillo and vicinity.

The map shows the part of the transmission line of West Texas Gas Company from the Texas Panhandle Field to the vicinity of Amarillo, where it is interconnected with the line of Panhandle Pipe Line Company. The part of

the transmission system of West Texas Gas Company not shown on the map extends from Amarillo in a general southerly direction to several communities in Texas, and also to the Texas-New Mexico state line, near which line gas is sold to New Mexico Eastern Gas Company for resale to consumers in New Mexico and Texas.

The transmission line of Texoma Natural Gas Company from its Fritch Compressing Station in Hutchinson County, Texas to Gray Junction, Beaver County, Oklahoma, which crosses the Texas-Oklahoma state line, is shown on the map. Canadian River Gas Company leases a 25-per cent undivided interest in the transmission facilities of Texoma Natural Gas Company, and delivers gas to Colorado Interstate Gas Company at Gray Junction, Oklahoma. At that point Colorado Interstate Gas Company sells gas to Natural Gas Pipeline Company of America, which the latter transports through its system extending to Joliet, Illinoi. From this line, Natural Gas Pipeline Company of America sells gas for resale for ultimate public consumption in Kansas, Nebraska, Iowa and Illinois.

Q. Mr. O'Connor, that map has in the lower left-hand corner the legend indicating the ownership of the various lines and showing the abbreviations affixed to the various lines on the map, is that correct?

A. That is correct.

Q. I will ask you whether in connection with your work in this investigation you have also prepared separate maps of each of the following: The Canadian River Gas Company, Colorado Interstate Gas Company, and Colorado-Wyoming Gas Company, showing in more detail the physical properties, as well as the delivery points on each of those lines?

A. I have prepared maps showing the transmission facilities of each company on separate maps and the field facilities of the Canadian River Gas Company.

Q. On a separate map?

A. On a separate map.

Mr. Lange: I would like to ask the reporter to mark this exhibit for identification as Exhibit No. 45.

(Exhibit 45, Witness O'Connor, marked for identification.)

By Mr. Lange,

Q. Mr. O'Connor, will you look at this map and state whether or not it was prepared under your direction or supervision?

A. It was.

Q. Mr. O'Connor, what does this map, Exhibit No. 45, represent?

A. It shows the general location of the wells of the Canadian River Gas Company, the field lines or gathering lines, and other principal facilities of the company in the field, including the Bivins Compressing Station and gasoline plant, and it also shows the Kitch Compressing Station and gasoline plant of the Texoma Natural Gas Company, and the transmission line of Texoma: that is, the direction of it, in which facilities the Canadian River Gas Company leases a 25-per cent undivided interest.

Q. I note in the lower left-hand corner of the map there is a legend giving by symbols the various facilities of the company, is that right?

A. Yes, sir.

Q. And it also indicates the line of pipes as shown on the map?

A. Yes, sir.

Q. Have you prepared a statement containing a description of these facilities?

A. I have.

Q. That description I referred to is a combined statement of all three companies?

A. No.

Q. It describes more than that map of the Canadian River Gas Company?

A. That is right.

Mr. Lange: I will have the reporter please identify this map as Exhibit 46.

(Exhibit 46, Witness O'Connor, marked for identification.)

By Mr. Lange:

Q. I show you this map identified as Exhibit 46. What does it represent, Mr. O'Connor?

A. It is a map showing the general location of the gas transmission system of the Canadian River Gas Company as of December 31, 1939.

Q. Was this map prepared under your direction and supervision in connection with your work in the investigation of this company?

A. It was.

Q. Mr. O'Connor, will you describe the facilities as portrayed on these two maps just identified in connection with the properties of the Canadian River Gas Company?

A. I have another statement here which describes them in some detail.

Q. Of the Canadian River Gas Company?

A. Yes.

Q. Will you read that statement, please?

A. All of it or the resume?

Q. The statement itself.

Mr. Campbell: If the Examiner pleases, may I ask Mr. O'Connor just one question?

Mr. Lange: It is all right.

Mr. Campbell: Is the Federal Power Commission your sole employer at this time?

The Witness: Yes, sir.

Mr. Campbell: If the Examiner pleases, for the record, and while, perhaps, there is very little in these exhibits so far that have just been identified, there is an objection to all of Mr. O'Connor's testimony, which I think in frankness to all concerned we might just as well make. It is this:

From Mr. O'Connor's statement it appears that the Federal Power Commission is his sole employer. It appears in this case that the Federal Power Commission is the complainant and the tryer of the facts and of course it will ultimately be the decider of the facts in this case.

We submit it violates due process for an employe of the judge and the jury, so to speak, to be a witness in this case. Therefore, the Colorado Interstate Gas Company and the Canadian River Gas Company object to any and all of the testimony offered by employes of the Federal Power Commission in this case.

The Trial Examiner: The objection will be overruled.

You may proceed, Mr. Lange.

Mr. Campbell: Let the record show an exception. To avoid duplicity I would like to say we propose to renew that objection to each Federal Power Commission witness and I presume it will be overruled, but we would like to have the record so show there.

The Trial Examiner: Very well.

Mr. Keffer: So the record may be perfectly clear, the Canadian River Gas Company registers the same objection and I take it it is overruled, and we will also make an exception to the ruling.

The Trial Examiner: Very well.

Mr. Lange: At this time we desire to introduce these maps in evidence, maps which have been identified here.

The Trial Examiner: Exhibits Nos. 44, 45 and 46, Mr. Lange?

Mr. Lange: That is right.

The Trial Examiner: Is there any objection to the offer of Commission's counsel?

Mr. Brock: We have no objection except the one just made by Mr. Campbell, and subject to checking, of course, for corrections.

The Trial Examiner: Yes, that will be understood.

Exhibits Nos. 44, 45 and 46, inclusive, will be received.

(Exhibits 44, 45 and 46, Witness O'Connor, received in evidence.)

By Mr. Lange:

Q. Mr. O'Connor, have you prepared a statement with reference to the description of these facilities of the Canadian River Gas Company?

A. I have prepared a statement which sets forth certain facts concerning the development of the property of the company. It is a rather brief description of the facili-

ties owned and leased as of December 31, 1939, and a description of the operations of the company in the year 1939.

Mr. Lange: Let that be identified by the reporter, please.

The Trial Examiner: It will be marked for identification as Exhibit No. 47.

(Exhibit 47, Witness O'Connor, marked for identification.)

By Mr. Lange:

Q. Mr. O'Connor, will you read that statement into the record, please?

A. You mean the description of this exhibit?

Q. Yes.

A. (Reading)—Exhibit No. 47, entitled "Canadian River Gas Company, General Description of Property and Operations," was prepared by me and under my direct supervision.

The exhibit contains a brief statement of important facts relating to the development of the properties of Canadian River Gas Company, a general description of facilities owned by the company as of December 31, 1939, and a brief description of the operations of the company in the year 1939. The exhibit also contains a "gas balance" statement for 1935 to 1939.

The basic data used in preparing the exhibit were obtained from contracts filed by the company with the Federal Power Commission, information supplied by the company on request, an investigation of the records of the company, inspection of its facilities by me and by persons working under my direct supervision, and from information collected by the Commission's engineering and accounting staff during the investigation under Docket G-124.

Beginning on page 1, the exhibit sets forth certain important facts relating to the development of the properties owned or leased by Canadian River Gas Company. The original acquisitions of gas production facilities from Amarillo Oil Company in 1928 are described, and the subsequent purchases of other properties and construction of facilities required to transmit natural gas from the gas

field in Texas to the markets developed by and for the company are outlined.

Commencing on page 2, there is a description of facilities owned or leased by Canadian River Gas Company as of December 31, 1939. This description is not intended to be full or complete as to detail, but it covers the more important facts as to the extent and location of the facilities.

Beginning on page 3, Exhibit No. 47, it briefly describes the operations of Canadian River Gas Company in 1939. This description shows that Canadian River Gas Company produced all its gas requirements in 1939 from its own wells in the Texas Panhandle Field, transmitted gas from Texas into New Mexico and Oklahoma, and sold gas to three companies in Texas, New Mexico and Oklahoma, which was resold for ultimate public consumption for domestic, commercial and industrial uses in eight states—Texas, New Mexico, Colorado, Wyoming, Kansas, Nebraska, Iowa and Illinois.

Schedule No. 1 of Exhibit No. 47 is a tabulation of gas receipts and disbursements of Canadian River Gas Company in MCF on a uniform pressure base of 14.65 pounds per square inch absolute, for the years 1935 through 1939.

Mr. Lange: We desire at this time to offer this exhibit in evidence.

Mr. Brock: We, of course, haven't read this exhibit. We will have to reserve any objections to it until we have had an opportunity to read it.

The Trial Examiner: I think, Mr. Lange, in view of the fact that the exhibit does contain a rather lengthy statement, the Examiner will defer ruling on the exhibit at this time.

Mr. Lange: That is agreeable, Mr. Examiner.

Q. Mr. O'Connor, in connection with your work on this investigation, did you also have occasion to prepare a map showing the facilities employed by Colorado Interstate Gas Company in connection with its transportation of natural gas?

A. I did.

Mr. Lange: I will have the reporter mark this exhibit for identification as Exhibit No.—

The Trial Examiner: It will be marked for identification as Exhibit No. 48.

(Exhibit 48, Witness O'Connor, marked for identification.)

By Mr. Lange:

Q. Mr. O'Connor, I will ask you whether this map, designated as Exhibit No. 48, was prepared by you or under your general supervision and direction?

A. It was prepared under my general supervision and direction.

Q. Mr. O'Connor, what does Exhibit No. 48 represent?

A. Exhibit No. 48 is a map showing the general location of the transmission facilities of Colorado Interstate Gas Company as of December 31, 1939.

Q. In other words, it reflects the physical facilities of the company, showing the connecting points also with Canadian River Gas Company in the lower right-hand corner?

A. It shows that the main transmission line of Colorado Interstate Gas Company begins at the terminus of the main transmission line of Canadian River Gas Company in Union County, New Mexico, and extends across New Mexico and into Colorado, terminating in the vicinity of Denver, Colorado.

Q. And it also shows the connecting point in the vicinity of Denver with Colorado-Wyoming Gas Company?

A. It does.

Q. Have you in connection with the study of this company's facilities and operations prepared a descriptive statement?

A. I have.

Mr. Lange: I will ask the reporter to identify this exhibit.

(Exhibit 49, Witness O'Connor, marked for identification.)

By Mr. Lange:

Q. Mr. O'Connor, will you read into the record a resume

of the exhibit just identified as No. 49, being a general description of the property and operations of Colorado Interstate Gas Company?

A. (Reading)—Exhibit No. 49, entitled "Colorado Interstate Gas Company, General Description of Property and Operations," was prepared by me and under my direct supervision.

This exhibit contains a brief statement of the important facts relating to the development of the property of Colorado Interstate Gas Company, a general description of facilities owned by the company as of December 31, 1939, and a brief description of the operations of the company in 1939. The exhibit also contains a "gas balance" statement for 1935 to 1939.

The basic data used in preparing the exhibit were obtained from contracts and reports filed by the company with the Federal Power Commission, information supplied by the company on request, an investigation of the records of the company, inspection of its facilities by me and by persons working under my direct supervision, and from information obtained by the Commission's accounting and engineering staff during the investigation under Docket G-124.

Beginning on page 1, the exhibit sets forth certain important facts relating to the development of the properties of Colorado Interstate Gas Company. The extent and location of the main transmission line, lateral lines, and other facilities are briefly described, and the time of construction of the various sections is stated. Major retirements and acquisitions of laterals since original construction are also stated.

A description, as of December 31, 1939, of the major natural gas facilities of Colorado Interstate Gas Company begins on page 2, Exhibit 41. This description is not intended to be complete as to detail, but it covers the more important facts as to the extent and location of principal facilities.

Exhibit No. 48 consists of a map, entitled "Natural Gas Transmission System of the Colorado Interstate Gas Company." This map shows the location of the transmission

facilities owned by the company, which serve to deliver gas to ultimate consumers, and the points of purchase and sale of gas on the Denver Line. The map does not show the connection of the line of Texoma Natural Gas Company with that of Natural Gas Pipeline Company of America at Gray Junction, Oklahoma, where Colorado Interstate Gas Company sells gas to Natural Gas Pipeline Company of America, because no facilities are owned by Colorado Interstate Gas Company at that location.

A brief statement of the operations of the company begins on page 4 of Exhibit No. 49. The gas volumes sold in 1939 to Natural Gas Pipeline Company of America at Gray Junction, Oklahoma, and the Denver line sales to the six direct customers, five gas distribution companies and one pipe line company are shown; the dates of initial natural gas service to each customer on the Denver line are also indicated. The description of the operations of the Colorado Interstate Gas Company shows that the company purchases its entire natural gas requirements from Canadian River Gas Company at two locations, Gray Junction, Oklahoma and Clayton Junction, New Mexico, and that all such gas is produced by Canadian River Gas Company in the Texas Panhandle Field. The description further shows that this gas is transmitted across state lines and is resold for ultimate public consumption for domestic, commercial, and industrial uses in six states—Colorado, Wyoming, Kansas, Nebraska, Iowa, and Illinois.

Schedule No. 1 of Exhibit No. 49 is a tabulation of gas receipts and disbursements of Colorado Interstate Gas Company in MCF on a uniform pressure base of 14.65 pounds per square inch absolute, for the years 1935 through 1939.

Q. Mr. O'Connor, in further connection with this work, I will ask you whether you prepared a map showing the facilities of Colorado-Wyoming Gas Company?

A. I have.

Mr. Lange: I will ask the reporter to identify this exhibit as Exhibit No. 50.

(Exhibit 50, Witness O'Connor, marked for identification.)

By Mr. Lange:

Q. Mr. O'Connor, I will ask you what the instrument identified as Exhibit 50 represents?

A. It is a map of the Natural Gas Transmission System of the Colorado-Wyoming Gas Company as of December 31, 1939, and it shows the general location of the transmission lines and gas purchases and gas delivery points, and compressing stations.

Q. Was this map prepared under your supervision and direction?

A. It was prepared under my supervision and direction.

Q. Mr. O'Connor, this map, Exhibit No. 50, shows the physical connection of Colorado-Wyoming Gas Company transmission line with that of Colorado Interstate Gas Company, does it not?

A. Yes, it shows the location of the Arapahoe measuring station of the Colorado Interstate Gas Company in Arapahoe County, Colorado, where the systems of Colorado Interstate Gas Company and Colorado-Wyoming Gas Company connect, and where Colorado Interstate Gas Company delivers gas to the Colorado-Wyoming Gas Company.

Q. Have you prepared a statement showing the description of these facilities of the Colorado-Wyoming Gas Company?

A. I have.

Mr. Lange: I will ask the reporter to mark this document for identification.

(Exhibit 51, Witness O'Connor, marked for identification.)

By Mr. Lange:

Q. Mr. O'Connor, will you state into the record what this general description of the property of Colorado-Wyoming Gas Company is as reflected in Exhibit No. 51?

(Vol. VI, pp. 792-815.)

Exhibit 50 (Appendix this Record).

Commission Exhibit 51 (Appendix this Record).

Commission Exhibit No. 44 (Appendix this Record).

Certificate of Incorporation of Colorado-Wyoming Gas Company, as follows:

(1) *Organization.*

Articles of Incorporation and Amendment (Exhibit 100).

Dated:

December 1, 1925, and December 10, 1931.

Incorporated:

Under laws of Delaware.

Capital Stock:

50,000 shares common stock without nominal or par value.

Term of Existence:

Perpetual.

* * * * *

Second, The principal office of the corporation is to be located in the City of Dover, in the County of Kent, in the State of Delaware, and the name of its resident agent is James M. Satterfield.

Third: The nature of the business of the corporation, and the objects and purposes proposed to be transacted, promoted and carried on are:

(a) To purchase, take, hold, own, lease, construct or otherwise acquire, to maintain and operate, mortgage, sell, convey, let exchange and deal in pipe lines, *distribution* lines, mains, pipes, conduits, ducts, services, pumping and compressor stations, terminals, tanks, work and plants, and any and all apparatus and/or appliances necessary, useful or convenient for the transportation, distribution, storage, measuring and marketing of gas for any purpose to which gas is or hereafter may be applied:

(b) To purchase, take, hold, own, lease, construct or otherwise acquire, to maintain and operate, mortgage, sell, convey, let, exchange and deal in gas-bearing, oil-bearing and other mineral-bearing properties, leases, mines, wells and rights, and any and all interest whatsoever therein or thereto, and to engage in the business of *producinct*, mining and selling gas, oil and other minerals:

(c) To purchase, take, hold, own, lease, construct or otherwise acquire, to maintain and operate, mortgage, sell,

convey, let, exchange and deal in, within and without the State of Delaware and in any part of the world, real property, lands, leaseholds, or any interest, estate and rights in real estate and any personal and mixed property, and any franchises, grants, rights, licenses or privileges necessary, useful or convenient for any of the purposes herein expressed or otherwise:

(d) To conduct and carry on all or any part of its business, without restriction or limit as to amount, either within or without the State of Delaware, in the other States, District of Columbia, territories, colonies or dependencies of the United States, and in any or all foreign countries, or in any part of the world, and to have one or more offices within or without the State of Delaware or in any part of the world:

(e) To do all and everything necessary, suitable, proper or convenient for the accomplishment of any of the purposes, or the attaining of any of the objects, or the exercise of any of the powers herein set forth, whether herein specified or not, either alone or in connection with other firms, individuals or corporations, both in the State of Delaware and in the United States and elsewhere, and to do any other act or acts, thing or things incidental or appurtenant to, or growing out of, or connected with said businesses or powers, or any part thereof, if not inconsistent with the laws under which this corporation is organized:

(f) It is declared that the objects and powers specified in the various paragraphs contained in this clause shall be in no wise limited or restricted by reference to or inference from the items of any other paragraphs of this or any other clause of this Certificate of Incorporation.

(Ex. 100.)

All of Petitioner's property is located and all its business operations carried on in the State of Colorado and Wyoming; all of its managing and operating offices, officers and employees are located in Colorado; all its books and records are kept in and maintained at Denver, Colorado; and all directors' meetings are held at Denver.

(Vol. 24, pp. 3272, 3288, 3289, 3317-3318, 3323, 3324.)

The Colorado-Wyoming Company has no mortgage bonds, debentures or other securities outstanding (Ex. 105). All of its common stock is outstanding and owned by Public Service Company of Colorado, and pledged in connection with the mortgage obligations of that company (Vol. 24, pp. 3298-3299).

(2) *Original System and Gas Supply.*

Colorado-Wyoming Company, incorporated in 1925, began operations in the same year. The Company owns and operates a natural gas transmission system from a point near Littleton, Colorado, to Cheyenne, Wyoming, with branches serving numerous communities, industrial plants and public authorities in the State of Colorado, also serving the City of Cheyenne and the United States War Department at Fort Warren in the State of Wyoming. (See Map, Ex. 50, Appendix.)

In December, 1925, the company entered into contract for the purchase of natural gas at the Wellington Field, so-called, in Larimer County, near Fort Collins, Colorado. This contract covered gas in excess of the needs of the seller, the Fort Collins Producing Corporation, and was to run for an indefinite period. In the latter part of 1925, a 6-inch transmission line was built from the Wellington Field to Fort Collins. Deliveries at Fort Collins began December 10, 1925, pursuant to contract with the local distribution company, acquired by Public Service Company in 1926. In 1926, a 6-inch transmission line was constructed from the Wellington Field to Cheyenne, Wyoming. Deliveries at Cheyenne began July 7, 1926, pursuant to contract of April 1, 1926, between the Company and the Cheyenne Light, Fuel & Power Company. In 1927, a 6-inch branch transmission line from the Wellington-Fort Collins main transmission line was constructed to the plant of Colorado Portland Cement Company near Laporte, Colorado. Initial delivery of gas to this industrial customer was made on November 5, 1927. These operations completed the operating system of Colorado-Wyoming Gas Company as then designed and planned.

Until 1929 the entire supply of natural gas to satisfy the

Company's requirements was secured from the Wellington Field (Ex. 51).

(3) *Changes in Company System and New Gas Supply.*

In the year 1929, however, it became apparent that the gas supply from the Wellington Field, which had been expected and was relied upon to meet all the requirements of the Company for a long term of years, was rapidly diminishing and would thereafter shortly be entirely exhausted. (Vol. 24, p. 3411; Vol. 29, pp. 4001-4003; 4033-4037; Ex. 120; Vol. 84, p. 12,464.)

The failing supply of available gas from the Wellington Field in Colorado, which rendered the substantial change of the Colorado-Wyoming Company's system essential in 1929 and 1930, is reflected in the annual purchases of gas in M.c.f. by the Company during the years 1928 to 1932, inclusive (Ex. 244):

	1928	1929	1930	1931	1932
Continental Oil Co.	2,254,599	1,718,642	1,275,030	453,955	163,078
Colorado Interstate Gas Co.	.....	33,943	888,112	1,800,153	2,112,038
Myer Goodstein	.....	.....	57,618	77,284	100,839

After 1932 deliveries from the Wellington Field were negligible and ceased entirely in 1937.

MR. HARRY HANCOCK, a witness for the Company and familiar with all its operations from the time of original construction of its first lines and facilities (Vol. 24, p. 3408, *et seq.*), testified with respect to the re-orientation and reconstruction of the Company's plant and operations occasioned by the failure of gas supply in the Wellington Field, as follows:

"Q. Mr. Hancock, is there any relationship between the operation of the lines of the Colorado Interstate Gas Company and the Colorado-Wyoming Gas Company?

"A. No.

"Q. Is there any pressure identity in those two lines?

"A. Only such pressure identity as may be coincidental.

"Q. Is the pressure in the line of the Colorado-Wyoming Gas Company controlled entirely by that company through its own facilities?

"A. It has been in the past from Arvada station north,

and in the future will be from Arapahoe station north, which will constitute in the latter case practically the entire property.

"Q. So that any identical pressure at any time that occurs between the pressure of the gas of the Colorado Interstate Company and the Colorado-Wyoming Gas Company is purely coincidental?

"A. That is right.

"Q. Mr. Hancock, the present system of the Colorado-Wyoming Gas Company has not always received its gas from the Colorado Interstate Gas Company at the Arapahoe station, has it?

"A. No, it has not.

"Q. Was the Colorado-Wyoming Gas Company an operating gas company prior to the time of any connection whatever between its system and the system of the Colorado Interstate Gas Company?

"A. It was.

"Q. Where was the original construction so far as Colorado-Wyoming Gas Company was concerned; and where did its pipe line go, and from what source did it obtain its gas?

"A. The first source of gas was the Wellington structure north of Fort Collins and the first line was built from that structure to Fort Collins.

"Q. Thence—

"A. And the next step was the construction of the 6-inch main line from the Wellington structure north to Cheyenne.

"Q. And were both of those communities first served wholly from the Wellington field?

"A. They were.

"Q. Thereafter was it necessary to readjust and reconstruct the system of the Colorado-Wyoming Gas Company?

"A. It was.

"Q. What was the necessity that required such reconstruction?

"A. The depletion of the Wellington field and the necessity of procuring the gas supply elsewhere.

"Q. So as the result of that the original facilities of the Colorado-Wyoming Gas Company became really a part of a larger plant with a wholly different source of supply?

"A. That is right."

(Vol. 25, pp. 3522-3524.)

As a consequence, in 1929 the Company undertook to secure a new and independent source of supply to continue service to its customers and to protect its own investment.

The only available supply was natural gas from the Texas Panhandle-Denver pipeline of Colorado Interstate Company. On October 3, 1929, the Colorado-Wyoming Company entered into a 20-year contract of purchase with Colorado Interstate Company for delivery of gas at a point in Arapahoe County, Colorado, near Littleton, called the "Arapahoe Station." This agreement provides for the sale and delivery by Colorado Interstate Company of natural gas as required by Colorado-Wyoming Company to supply domestic consumers, distribution companies in northern Colorado and southern Wyoming, industrial consumers under contract made with the consent and approval of Colorado Interstate Company and the gas requirements of the Colorado-Wyoming Company in its compressor stations and other property. (Ex. 101.)

In the years 1929 and 1930, Colorado-Wyoming Company constructed 30 miles of 10-inch and 43 miles of 8-inch main transmission line together with compressor station facilities, from the Arapahoe measuring station to Fort Collins, where connection was made with the existing operating system from Fort Collins, Colorado, to Cheyenne, Wyoming. In 1929, 1930 and 1931, branch transmission lines were constructed for sale and delivery of gas to Public Service Company of Colorado for resale to ultimate consumers in Arvada, Boulder, Berthoud, Brighton, Fort Lupton, Golden, Longmont, Loveland, Johnstown, Wheatridge, and to a number of points of delivery in the Denver suburban area generally referred to as the "Denver Fringe."

In 1930, a 6-inch transmission line was built from Loveland to Greeley for sale and delivery to Greeley Gas & Fuel Company of gas for resale to consumers in that community.

The Loveland-Johnstown-Greeley line includes extension and facilities for direct industrial service by Colorado-Wyoming Company to the Johnstown plant of the Great

Western Sugar Company as well as the town of Johnstown. (Ex. 103.)

From 1932 to 1939, lateral lines to serve direct industrial customers were constructed as follows: Kuner-Empson Co., Brighton; Valmont Electric Generating Station of Public Service Company of Colorado, near Boulder; Marston Lake Pumping Station, Denver Water Board, Jefferson County; Adolph Coors Co. at Golden; International Metals Foundation, near Littleton, all in Colorado.

Colorado-Wyoming Company presently owns and operates approximately 195 miles of natural gas transmission pipelines located in Arapahoe, Jefferson, Boulder, Adams, Larimer and Weld Counties in Colorado, and Laramie County, Wyoming, in rendering the service to the communities and customers hereinabove named. The total Wyoming mileage is 10.5 miles of 6-inch main line and 2.3 miles of 3½-inch branch line to Fort Warren. The main trunk line is approximately 114 miles long and the branch lines approximately 81 miles in length. The lines range in size from 10-inch nominal diameter to 6-inch nominal diameter on the main line, and from 8-inch to 1-inch nominal diameter on the branch lines. (Ex. 50, 51.)

The present compressor station main unit capacities of the Colorado-Wyoming Company are Arapahoe Station, 600 rated horsepower (in operation January, 1941, (Vol. 86, p. 12,875); Arvada, 1020 rated horespower; and Wellington Station, 340 rated horsepower. The original horsepower of the Wellington compressor station in 1928 was 1360. After 1929, when the original Fort Collins-Cheyenne system became a portion only of the Arapahoe Station-Fort Collins-Cheyenne system, much of the compressor station capacity at the Wellington station was transferred to the Arvada station in Jefferson county, near Denver, which latter station was originally constructed and enlarged in the years 1930 and 1931.

(Vol. 24, pp. 3407-3418.)

After construction of the Arapahoe-Fort Collins main line and the first delivery of Texas gas into the Fort Collins-Cheyenne system on January 21, 1930, there was no

enlargement of service in Wyoming, the War Department at Fort Warren and the Cheyenne Light, Fuel & Power Company continuing as the only customers in that state. (Ex. 105.)

A small amount of gas amounting to less than 2 per cent of its requirements is purchased locally by Colorado-Wyoming Company in the Berthoud Field, so-called, in northern Colorado, from the Goodstein Pipeline Company, the producer thereof. (Ex. 113.) The remaining 98 per cent of the gas requirements of the Company are purchased under its contract of October 3, 1929, from Colorado Interstate Company. The Company has not had and does not have any natural gas production. At all times it has purchased its entire requirements of natural gas.

(4) *Gas Sales M. c. f. 1939-1940.*

In addition to the sale of gas for resale to Public Service Company of Colorado, Greeley Gas & Fuel Company, and Cheyenne Light, Fuel & Power Company, a small amount of gas is sold also to Highway Gas Company for resale to its customers, with delivery at a point on the main line of the Company near Loveland, Colorado.

Direct industrial sales are made to ten Colorado industrial plants, enumerated, *post*.

Colorado-Wyoming Company sells natural gas directly to the United States War Department at Fort Warren, Wyoming, and Fort Logan, Colorado; to the United States Prison Farm, also at Fort Logan; and to the Board of Water Commissioners of the City of Denver, near Denver.

The total 1939 and 1940 sales of Colorado-Wyoming Company, at contract pressure base, were (Ex. 246):

Public Service Company of Colorado for resale in Colorado:

	M. c. f. Delivered	
	In 1939	In 1940
Boulder District	221,951	253,776
Brighton & Fort Lupton	38,227	45,896
Fort Collins District	445,744	472,666
"Denver Fringe"	330,250	354,293
Total	1,036,172	1,126,631

Total sales in the same years to Greeley Gas & Fuel Company, Greeley, Colorado, for resale were 170,847 M. c. f. in 1939, and 188,233 M. c. f. in 1940; and to Highway Gas Company, near Loveland, Colorado, for resale, were 5,334 M. c. f. in 1939, and 8,038 M. c. f. in 1940.

Total sales in 1939 and 1940 to Cheyenne Light, Fuel & Power Company at the Cheyenne, Wyoming, "city gate" for resale were 494,058 M. c. f. and 541,634 M. c. f., respectively.

Total sales for resale in 1939 were 1,706,411 M. c. f. and in 1940 were 1,864,636 M. c. f., an increase of 9%.

In the year 1939, the sales at Fort Warren, Wyoming, were 18,527 M. c. f.; and in 1940 were 19,436 M. c. f.; and at Fort Logan, Colorado, 8,776 M. c. f. and 8,035 M. c. f., respectively. In the same years sales to the Denver Water Board were 9,010 M. c. f. and 9,192 M. c. f., respectively. Sales to the Federal Prison Farm near Fort Logan began in 1940 and were 1,110 M. c. f.

Total sales to Public Authorities in 1939 were 36,313 M. c. f. and 37,763 M. c. f. in 1940, an increase of 4%.

Sales to direct Industrial customers, all in Colorado, were:

Customer	M. c. f. Sold *In 1939*	*1940*
Adolph Coors Company	18,677	15,294
Colorado Portland Cement Co.	1,015,502	894,048
Thos. Bate and Sons	81	389
Denver Pressed Brick Company	52,597	50,430
Fort Collins Producing Corp'n	4,575	8,901
Golden Fire Brick Company	66,921	45,174
Great Western Sugar Company	356,606	250,205
Kuner-Empson Company	38,570	42,167
Producers Canning Company	333	894
Public Service Co. of Colorado—		
Valmont Generating Station	31,056	0

Total sales to direct industrial customers were 1,584,918 M. c. f. in 1939, and in 1940 were 1,307,502 M. c. f., a decrease of 17.5%.

Total sales to the Company in M. c. f. at the contract pressure base in the year 1939 were 3,332,446 M. c. f., and in the year 1940, 3,209,991 M. c. f., a decrease of 4% (Ex. 246.)

(5) *Priorities of Service.*

The testimony of the Company witnesses was that the system of Colorado-Wyoming Company as originally built and as reconstructed and enlarged was conceived, constructed, and at all times operated on the foundation of the priority of domestic service and customers over industrial service and customers.

MR. HANCOCK testified on cross-examination in reference to the Colorado-Wyoming system, that "if service were contemplated only to the sales for resale, these lines would need to be constructed exactly as they are" and again "there is no intention of using any portion of the main line capacity when that gas is needed for delivery to sales for resale and public authorities, and that is the way it actually works out under actual operating conditions" (Vol. 28, p. 3842).

Further he again discussed the same point, as follows:

"Q. * * * the only portion of this entire investment that is applicable in your opinion to industrial and public authority customers on this company's system is $106,952, plant and investment depreciated to $90,551?

"A. That is right. If the system was built as it is to supply only the customers to whom gas is sold for resale, it would be necessary to have the plant, as here indicated, represented by the plant and investment figure of $1,877,648.

"Q. But the system was not in fact so built, was it, Mr. Hancock?

"A. It was so built except for small branches to these industrial customers who use gas off peak and are cut off at time of peak day demand.

"Q. Now, how was the system built that you attempt to apply to your calculated total investment here given in Exhibit No. 117?

"A. You say, how was the system built?

"Q. Yes, with reference to your interpretation of the applicable total investment of property, resale customers.

"A. The general pipe line system was built as it now is primarily to serve the customers receiving gas for resale.

"Q. Well, when you say right there 'primarily' what do you mean by 'primarily' with reference to the total?

"A. It means that the system was built, having in mind the gas volume requirements of the customers now receiving gas for resale, and the connection of industrial customers through specially built branch lines devoted solely to the service of these industrial customers, was purely incidental.

"Q. Purely incidental?

"A. Yes, sir, and did not affect the construction of the main pipe line system as a whole."

(Vol. 28, pp. 3814, 3815.)

See, Exhibits 101, 102, 103, 104, 242.

Q. Well, not as a whole—when was this first unit of this company's pipe line system constructed?

A. I believe that was in 1925.

Q. 1925, between what points?

A. I believe it was between the Wellington field and Fort Collins.

Q. All right, now, what was served—or, rather, what customers were served on that?

A. The city of Fort Collins.

Q. That was the sole customer?

A. As far as I know it was. By the city of Fort Collins I mean the distributing company which serves the city of Fort Collins.

Q. Yes.

A. Yes.

Q. And what was the next construction on this system?

A. I had those dates before me when I testified to this same information last Friday. I will look it up again if you would like to have it. It will take a few minutes.

Q. Yes, at this time it is important on two or three points with reference to that, if we can have it at this time.

A. The next construction was from the Wellington field in 1926 north to Cheyenne.

Q. And what customers were attached at that time?

A. The customer was the distributing company at Cheyenne.

Q. Any other customer or customers at that time?

A. I do not believe there were.

Q. Then the next construction and customer attached?

A. The next customer attached was the Public Service Company distributing system at Boulder, Colorado, in September 1929.

Q. In September 1929?

A. Yes.

Q. And what was the next one?

A. The town of Edgewater, in October 1929.

Q. Was that the distributing company there?

A. That is right.

Q. And then the next one?

A. The distributing company at Berthoud, in December 1929.

Q. The next one?

A. The distributing company at Arvada, in December 1929.

Q. The next one?

A. Do you wish me to include, Mr. Lange, the various industrial consumers along with the others?

Q. Yes, I want them all in chronological order. I forgot to mention that. I want all of the attachments in their chronological order.

A. I will go back on the dates, then.

Q. Yes.

A. The Producers Canning Company was first served in July 1927.

The Cement plant was first served in November 1927.

The Sugar plant of the Great Western Sugar Company was first served in November 1929.

The following cities were first served in the latter part of 1930: Loveland, Johnstown, Golden, Mount Air, and various small communities to the west of Denver.

The following cities were first served in the early part of 1931: Longmont, Brighton, and Fort Lupton.

The Golden Fire Brick Company was first served in August 1930.

Further service was given to small communities on the

west side of Denver in October of 1931, and the Kuner-Empson Company was first served in October 1934.

The Marston Lake delivery was first made in September 1926.

Further service was given to small communities west of Denver, including Wheatridge, in October 1936; also in October 1936 first service was given to Coors Brewery.

Mr. McCreery: Did you state the time of the first service at Greeley?

The Witness: I haven't yet. That is another table.

Mr. McCreery: Very well.

The Witness: I will go back to the public authority customers and then to Greeley.

The first delivery at Fort Logan was August 1930; the first delivery to the Greeley Gas & Fuel Company was in September 1930; Fort Warren was first served October 1, 1930; Highway Gas Company, August 1933. The first delivery to the Denver Pressed Brick Company was in April 1937 and to Valmont Power Plant delivery was made in March 1937. I believe that gives the dates of the first delivery to all of the customers of the company excluding minor taps and customers of that kind.

By Mr. Lange:

Q. Did you give the date of the first delivery to the distributing company at Cheyenne?

A. Yes, sir, I did. I stated it was in 1926, and now, with the note before me, I find it was in July 1926.

Q. July 1926?

A. Yes, sir.

Q. When was the taking of gas from the Berthoud field eliminated or restricted?

A. You mean the Berthoud field or the Wellington field, Mr. Lange?

Q. The Wellington field is the one I have reference to.

A. It is rather difficult to say when it was first restricted because it is a decline over a long period of years, the maximum production purchased by Colorado-Wyoming Gas Company for any one year being in 1928 with sub-

stantial declines in 1929, 1930, and even more rapidly in 1931, with accelerating declines on out to the date of last deliveries in 1937, the deliveries from 1933 to 1937 being almost negligible.

Q. The gas from the Wellington field, during the time that gas served the line from the Wellington field, was delivered at what destination and to what consumers?

A. It was delivered into the main line system as that system existed during each of the years when the Wellington gas was so delivered and intermingled or flowed to the various customers, it being probable that Cheyenne received most of the supply; that is, most of the gas delivered at Cheyenne was physically the gas produced from the Wellington field, but there might have been gas from other sources go to Cheyenne. After gas goes into a main pipe line system it is not practicable to identify which gas goes to which customer.

Q. Well, the flow of gas from the Wellington field was—strike that.

In what direction was the flow of gas from the Wellington field during the time that gas was taken from the field?

A. The gas flowed at certain times in two directions and at other times in one direction. During the period when the Wellington supply was greater than the Cheyenne requirements it flowed in two directions. When the supply became less than the Cheyenne requirements it only flowed in one direction, toward Cheyenne, along with other gas which flowed from the south to the Wellington field and intermingled with the Wellington gas for delivery to Cheyenne.

Q. Prior to the time that the Cheyenne requirement—strike that.

During the period of time the Cheyenne requirement did not include all of the production from the Wellington field to what other points on the line did the gas from the Wellington field flow?

A. Could I have that question, please?

Mr. Lange: Please read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: It flowed south through the main line towards the distributing systems being served south of Wellington.

By Mr. Lange:

Q. To which points? To which delivery points?

A. That probably varied every day, depending upon the demand and the amount of production from the Wellington field.

Q. All right, what main line delivery points were there to which that gas flowed?

A. Principally to the distributing company in Fort Collins.

Q. To the distributing company in Fort Collins?

A. Yes, sir.

Q. Did it flow to any main line industrials?

A. Yes.

Q. Where?

A. The Cement plant.

Q. Where is that located? Will you please mark that on Exhibit No. 5, Mr. Hancock?

A. It is located at the caption "Laporte, Colorado, Portland Cement Company," which is just north of Fort Collins.

Q. That direct line industrial was served with gas from the Wellington field?

(Vol. 27, pp. 3815-3823.)

* * * * *

Q. Now, then, do you have the Mcf. delivered to the Colorado Portland Cement Company for the years 1927 and 1928?

A Yes, sir.

Q. All right.

A. In 1927, deliveries to Colorado Portland Cement Company, 40,633,000 cubic feet; in 1928, 1,298,567,000 cubic feet.

Q. Now, going back to 1927, do you have the total deliveries for that year in Mcf., and is the 1927 figure one that represents a whole year or what portion of a year?

A. There are two questions there. I will answer the first one first.

Q. All right.

A. The total sales in 1927 were 604,737,000 cubic feet. Do you wish the ratio there?

Q. Yes, please give me the Mcf. at each delivery point during that year.

A. The previously mentioned total delivery of 604,737,000 cubic feet comprises 189,523,000 cubic feet to the Cheyenne Light, Fuel & Power Company; 340,213,000 cubic feet to the distributing company at Fort Collins; 40,633,000 cubic feet to the Colorado Portland Cement Company; and 34,368,000 cubic feet to miscellaneous main line sales not reflected on this sheet as to individuals.

The previously mentioned 40,633,000 cubic feet sale to the Colorado Portland Cement Company is approximately 6.7 per cent of the total deliveries during that year, the delivery to the cement company starting on November 5, 1927.

Q. In other words, the deliveries to the other purchasers were during that entire year compared with the delivery to the Colorado Portland Cement Company for a period from November 5 to the end of that year?

A. With the possible exception of that not applicable to small users, but in the main that is correct.

Q. Now, state it for 1928.

A. In 1928 the volume sales to the Cheyenne Light, Fuel & Power Company was 290,053,000 cubic feet; to the distributing company at Fort Collins, 453,926,000 cubic feet. To the—

Mr. McCreery: Is that Mcf. or cubic feet?

The Witness: 453,926,000 cubic feet.

To the Colorado Portland Cement Company, 1,298,567,000 cubic feet; to miscellaneous main line customers, 9,411,000 cubic feet, or a total of 2,051,957,000 cubic feet.

The sale to the Colorado Portland Cement Company previously mentioned in that year represents approximately 63 per cent of the total sales.

By Mr. Lange:

Q. Now, Mr. Hancock, with reference to the—

Mr. McCreery: May I interpose one question for the sake of clarity?

Mr. Lange: Surely.

Mr. McCreery: All gas deliveries in those two years were from the Wellington field, were they, Mr. Hancock?

The Witness: They were.

By Mr. Lange:

Q. When did delivery from the Wellington field cease?
A. The last delivery was in 1937.
Q. 1937?
A. Yes.
Q. Now, for the year 1929, give us those same figures, please.
A. In 1929 the sale to the Cheyenne Light, Fuel & Power Company was 382,283,000 cubic feet; to the distributing company at Fort Collins, 496,197,000 cubic feet; to the distributing company at Boulder, 21,490,000 cubic feet; to what I refer to as the Denver fringe district on the west side of Denver, 832,000 cubic feet; to the Great Western Sugar Company, 10,932,000 cubic feet; to the Colorado Portland Cement Company, 696,891,000 cubic feet; to miscellaneous main line customers, 10,615,000 cubic feet, making a total for all sales of 1,619,240,000 cubic feet.

The percentage which the sale to the cement company bears in relation to the total sales is approximately 43 per cent.

Q. The delivery to the Great Western Sugar Company was commenced at what time?
A. On November 30, 1929.
Q. And the town border service at Johnstown commenced when?
A. July 24, 1930.
Q. Now, again referring back to that calculated total investment made in your Exhibit No. 117, Mr. Hancock, I believe you stated yesterday that the method of calculating the allocations was carried out by Mr. Willard, or what fashion was that material delivered to you, and by whom?
A. The amount of the investments in the various lines

and the amounts of the organization and other known physical costs were furnished to me by Mr. Willard, and the computations to which I testified to yesterday were made by me or under my direction.

Q. With reference to this information furnished to you by Mr. Willard, did you make any independent investigation of your own on that or what did you do, if anything?

A. No, sir, I accepted the plant and investment data furnished to me by Mr. Willard.

Q. Will you read this letter from the Colorado-Wyoming Gas Company into the record?

Mr. McCreery: Please let me see the letter.

Mr. Lange: Surely.

(The document referred to was passed to Mr. McCreery.)

By Mr. Lange:

Q. Who is that letter from, Mr. Hancock?

A. From the Colorado-Wyoming Gas Company, 407 Continental Oil Building, Denver, Colorado, and is signed by Mr. H. P. Davis, Secretary.

Q. And that is addressed to whom?

A. It is addressed to the Federal Power Commission, Central Savings Bank Building, Denver, Colorado.

Q. And bears what date?

A. November 7, 1939.

Q. Will you please read that letter?

A. Yes.

"Federal Power Commission, Central Savings Bank Building, Denver, Colorado

"Gentlemen: Att'n: Mr. K. L. Smith, Examiner

"At the time of constructing our main line from Denver to Ft. Collins, Public Service Company of Colorado specifically requested that we include sufficient capacity in our lines to enable us to serve gas to Valmont plant. This involved changes in our construction from Arvada to Valmont Junction.

"1. Increase proposed 8-inch line from Arvada station to Boulder Junction to 10-inch size.

"2. Increase proposed 6-inch line from Boulder Junction to Valmont Junction to 8-inch size.

"The cost of this additional capacity installed in our lines under the expectation that we would be able to sell them approximately 1 billion cubic feet of gas annually was estimated by our engineers at $60,800. In addition to the above it was necessary that we construct a branch from the Boulder line to Valmont and a measuring station at the terminal. This latter branch and station shows a job order cost of $17,223, making a total investment of approximately $78,000.

"As stated above, we contemplated a load of 1 billion cubic feet annually, and, based on this volume it was determined that the business could be handled at a profit if the gross return to us was not less than 2.3 cents per Mcf. exclusive of cost of gas purchased. This was computed as follows:

"4 per cent depreciation on $80,000	$ 3200
"6 per cent return on investment	4800
"Compression costs on 1 billion feet estimated at 1 cent	10000
"Taxes, and other operating costs	5000
"Total	$23000

"Public Service Company of Colorado could not assure us of any continuity in their usage and declined to enter into any firm commitment for gas and up to 1936 this investment (made at their request), had not earned us a penny. At that time we insisted that a contract be entered into that would give us a fair return and depreciation on our investment. It was finally determined that in fairness to both parties they pay us a readiness to serve charge equal to depreciation and return or $8000 per year and we in turn would sell them such a quantity of gas as they care to use, up to 1 billion feet per year at a rate of 1½ cents above the price at which we might be able to purchase same from Colorado Interstate Gas Company. They could use this quantity of gas or none at all as they saw fit. The so-called 'nominal' price was mutually agreed as being the best price which we or either of us could obtain from the Colorado Interstate at such time and for such quantity as they might elect to use.

"We have no agreement with Colorado Interstate fixing the nominal price for Valmont gas. This must be bargained for separately whenever the Public Service Company notifies us that they wish to use. For deliveries made in 1939 we were able to secure a price of 9½ cents per Mcf., as evidenced by copy of attached letter from Colorado Interstate Gas Company dated May 10, 1939.

"Yours very truly,

"H. P. DAVIS (Signed), Secretary."

Q. Now, with reference to the agreement between Colorado-Wyoming Gas Company and Public Service Company of Colorado, being No. 9 in Exhibit No. 103, Page—rather, it is the second page of that beginning with this paragraph, Paragraph "Third" at the top of the page:

"Vendee agrees to • • •"—strike that.

"Vendee • • •"—that would be the Colorado-Wyoming Gas Company—

A. That would be the Public Service Company of Colorado.

Q. "• • • agrees to pay vendor • • •"—the Colorado-Wyoming Gas Company—"• • • for the readiness to serve provided under this contract a customer charge of eight thousand dollars ($8,000) per year applying against the fixed charges on that part of the vendor's investment which was made for this purpose."

You are familiar with that portion of the agreement, Mr. Hancock?

A. Yes, sir.

Q. And also with the contents of that letter from the Colorado-Wyoming Gas Company?

A. No, sir.

Q. All right, is that the first time you knew of the facts set forth in that letter?

A. No, I knew of the facts but I didn't know of the letter.

Q. Well, what consideration did you give those facts?

A. I knew the facts and gave them due consideration.

Q. In connection with this exhibit you have prepared, Exhibit No. 117?

A. Yes, sir.

Q. And also in connection with the allocation factors that you have just related?

A. Yes, sir. I can give my reasons if you care for them.

Q. Yes.

A. My conclusion was that while this letter and the contract recites the facts which existed at the time of the construction, not necessarily at the time of the execution of the contract with the Public Service Company of Colorado Valmont plant, my conclusion was as follows:

That in view of the rapid growth of the load of customers to whom gas is sold for resale, as well as to a limited extent to public authorities, I wish that we had made similar contracts with other customers which would have resulted in more capacity in the main lines actually used now for sale and resale. In other words, I think it was a fortuitous circumstance which resulted in the installation of the additional capacity. If it had not been installed at that time the load could not have been handled as it actually had been handled.

Q. And you are still definitely of the opinion that the method that you have in that exhibit is the proper one?

A. Yes, the method being that the investment solely dedicated to the use of the Valmont plant is deducted; further, that we have also deducted, as testified to yesterday, that portion of the investment in the 10-inch, 8-inch, and 6-inch main line, which is used on peak days for service to public authority customers on a somewhat theoretical basis. In other words, it only amounts to about one per cent of the investment in that line and obviously it would be impossible if the sale for resale customers were only served to make any reduction whatever in the investment required to service those customers.

Hence, if service was contemplated only to the sales for resale, those lines would need to be constructed exactly as they are.

Q. Now, you know, of course, that this contract between Colorado-Wyoming Gas Company and Public Service Company of Colorado is dated December 31, 1935, and is provided to continue in force until October 3, 1949?

A. That is right.

I would like to also point out, if I may, that there is no obligation to deliver gas on peak days; that there is no intention of using any portion of the main line capacity when that gas is needed for delivery to sales for resales and public authorities, and that is the way it actually works out under actual operating conditions.

(Vol. 28, pp. 3832-3842.)

* * * * *

Q. I see. Now, this service to Colorado Portland Cement Company has been of considerable volume as indicated by your figures for 1928 and 1929 as well as those in the exhibit of Mr. Davis, 105, and that service has been maintained pretty steadily by the company, hasn't it?

A. It has fluctuated from year to year.

Q. I mean insofar as continuity of service and lack of interruptions wherever possible is concerned.

A. It has been maintained at all times when the Colorado Portland Cement Company desired gas and when the Colorado-Wyoming Gas Company was able to furnish it.

Q. Do you know anything about a reference in Work Order No. 145, December 21, 1938?

A. No, sir.

Q. Read that, please.

A. This is what the sheet says:

"No. 145; Date, December 21st, 1938; estimated cost by accounts: Compressor stations, $988, Dr.; Compressor stations, $360, Cr.; Replacement reserves, $306, Dr.; Replacement reserves, $64, Cr.; Total, $924.

"Description: Equipped four compressors at Arvada station with unloading valves. There are six compressors at this station, two of which were supplied with unloading valves when new Class A cylinders were purchased two years ago. This requisition is to provide unloading valves for the other four compressors.

"Benefits, Etc.: Fuel saving of $150 per year in addition to retaining the load of the Cement plant which nets approximately $20,000 annually. Uninterrupted service to the Cement plant is very essential."

Q. The Cement plant referred to is the Colorado Portland Cement Company?

A. I believe it is.

Mr. Lange: Now, I don't know whether this is an accurate transcription of the voucher. We desire to supply an accurate transcription of that voucher—the job order, rather.

Mr. McCreery: Will you give us the number, please?

Mr. Lange: No. 145. And when that original is available, we desire—

Mr. McCreery: We'll have that after lunch.

Mr. Lange: We then desire to—

The Trial Examiner: I didn't hear your remarks, Mr. McCreery.

Mr. McCreery: I think we can have that here for Mr. Lange after lunch.

Mr. Lange: At that time, then, we will offer it.

Mr. McCreery: Do you want it as an exhibit? It is already read in the record.

Mr. Lange: Well, if it is correct as read, why, we need—

Mr. McCreery: Well, that is subject to comparison, and just leave it for that purpose.

Mr. Lange: We will offer it as it has been read, subject to any correction.

Mr. McCreery: That will be simpler, I think. I have no objection.

By Mr. Lange:

Q. Now, Mr. Hancock, what is the percentage of the total main line industrial load to the resale load for the year 1939?

Mr. McCreery: In volume or dollars?

Mr. Lange: In Mcf.

The Witness: May I have that question, please?

(The question referred to was read by the reporter, as set forth above.)

The Witness: That percentage don't mean anything to me. It involves different things. Now, may I make a suggestion?

By Mr. Lange:

Q. Yes.

A. You want the percentage of the industrial main line load to the total?

Q. To the total.

To the total sales?

Q. That's right.

A. For the year 1939 the industrial and main line direct sales volume was approximately 48 per cent of the total sales volume.

(Vol. 28, pp. 3849-3852.)

* * * * *

The Trial Examiner: Mr. Hancock, does the record reflect the peak day capacity of this line in 1940 and the peak day demand of the resale customers?

The Witness: The peak day demand on January 18, 1940, was $11,646,000. On that day the peak day delivery to sale for resale customers is 10,191,000. During that day for just portions of the day there were small deliveries to certain of the industrials, but not for the entire day, which accounts for a small delivery to the industrials on that day.

In November 1940 the peak day demand was 15,817,000, which so far as I know is the highest peak ever experienced and it is my information that on that day the industrials were all off for a substantial part of the day, as stated in regard to the Cement plant, some seven to nine hours, but that being such a recent peak the data pertaining to it has not been available in all respects.

The Trial Examiner: Now, what was your peak day capacity for the year 1940, Mr. Hancock?

The Witness: Both at the time of the January 18, 1940 peak and the November 1940 peak. I would regard the system as fully loaded at both of those times.

The Trial Examiner: So that your peak day capacity on those days approximately equalled your peak day demand?

The Witness: The peak day demand represented all of the gas that the line was capable of delivering under the operating conditions at that time.

The Trial Examiner: Well, now, the construction of this Arapahoe station—

The Witness: Yes, sir.

The Trial Examiner:—that will add some peak capacity to the line, will it not?

The Witness: Yes, sir.

The Trial Examiner: At the time that it is completed.

The Witness: Yes, sir.

The Trial Examiner: When will that be completed?

The Witness: It is now practically completed.

The Trial Examiner: Do you have any information as to—

Mr. McCreery: That is the first unit, is it not?

The Witness: The first unit is practically complete.

The Trial Examiner: What do you contemplate there? How many units?

The Witness: There is now one 600-horsepower unit and it is contemplated that in 1941 another 600-horsepower unit will be added.

The Trial Examiner: Well, have you made any calculation as to what your peak day capacity might be subsequent to the installation of those two units in the Arapahoe station?

The Witness: Yes, sir. After the second 600-horsepower unit is installed, making a total of twelve hundred horsepower installed, and based on 50-pound intake pressure which is the minimum pressure specified in the purchase contract, and with 175 pounds discharge from that station, the station will have a capacity of 15,100,000.

The Trial Examiner: Well, now, let's see. Where is the location of that station?

The Witness: That is practically at the beginning of the Colorado-Wyoming Gas Company line south of Denver.

I am afraid my statement is a little confusing as to why that is lower than the actual peak experience already had.

The Trial Examiner: Will you explain that, please?

The Witness: The difference comes about from the actual delivery pressures which have been in the past higher than the contract pressure. Now, instead of the 50-pounds intake pressure which I used in the foregoing statement, if due to a fortuitous circumstance we would obtain 75 pounds delivery pressure from the Colorado Interstate Gas Company, the capacity in that even with 175 pounds discharge would be 21,200,000; so the 21,200,000 is comparable to the 15,000,000 actual peaks that I have testified to, but if the delivery pressure of Colorado Interstate Gas Company drops to the amount which they are obligated to give us, then we will need the 1200-horsepower capacity station to just practically deliver what our past peaks have been.

The Trial Examiner: Well, what is your present delivery pressure?

The Witness: It varies through very wide limits. During the peak of January 18, 1940, which I referred to, the delivery pressure went to 71 pounds, which I believe is the lowest to which it has gone. Ordinarily it is considerably in excess of that; in fact, it is in excess of 100 to 150 pounds, but that one day's circumstance which is largely governing in the whole calculation.

The Trial Examiner: Yes, but 71 pounds is the lowest that you have had on your peak day demand?

The Witness: Yes, sir.

(Vol. 28, pp. 3857-3860.)

* * * * *

Mr. McCreery: In connection with the matter read into

the record this morning from what was designated as 145, which is really requisition No. 45, there seems to be some difference in the language employed and in the statements made.

I have prepared copies of all of the language which was referred to, having been taken from the original requisition, and perhaps the simplest way would be to offer the corrections for the record. Would that be all right?

Mr. Lange: Yes, sir.

Mr. McCreery: In that way would it be necessary to furnish it in exhibit form or could it be read into the record?

The Trial Examiner: I think it could be read into the record.

Mr. McCreery: Could it be assumed it was read in or should I read it?

The Trial Examiner: I think the reporter might just copy it in. You have the original there so that the Commission's counsel can compare it.

Mr. McCreery: I brought it for comparison if they desire to examine it.

The Trial Examiner: Yes. I will direct the reporter to copy it into the record as having been read.

(At the direction of the Trial Examiner, the following was copied into the record:)

"Location and Description of Work:

"To equip four compressors at our Arvada Station with unloading valves. There are six compressors at this station, two of which were supplied with unloading valves when new Class A cylinders were purchased two years ago. The other four have no means of unloading now, and this requisition is to provide unloading valves for those compressors.

"Necessity:

"Our loads have increased to the place where discharge pressures of 325 pounds are necessary most of the winter months. Our engines can operate against this pressure if

suction pressures can be maintained above 200 pounds, but stall when suctions get below that point unless the suction is cut to about 70 pounds. These lower pressures cut their capacities to a point where the entire output of the plant is insufficient to supply our demands and necessitates cutting off industrial loads during peaks. This causes dissatisfaction which is apt to lose us some of our best customers.

"The unloading valves enable us to operate with suction pressures of 150 pounds to 170 pounds which are the prevailing pressures, and doubles the capacity of the compressors.

"Benefits:

"Through the use of unloading valves we will be able to operate with fewer engines and a resultant fuel saving of about $150 per year. In addition to this saving we will be in a position to retain the Cement plant load which nets us roughly $20,000 annually. They claim that shut downs cost them about $200 each and that uninterrupted service is very essential. They are already equipped to burn powdered fuel and unless our service is maintained at a high standard we are apt to lose this load."

Whereupon Harry D. Hancock, the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and testified further as follows:

Redirect Examination.

By Mr. McCreery:

Q. Before the recess at noon, Mr. Hancock, certain inquiries had been made to you from Mr. Lange asking for information. Do you have the information available now which he requested?

A. Yes.

Q. Will you please give it to him?

A. Yes. The question was asked as to the extent of industrial gas sales for resale which was cut off on January 18, 1940. I find that in consulting my notes that in addition to the main line industrial customers, whose service was discontinued on that day, that the industrial sales for resale were cut off on both January 18 and January 19;

January 18 to the extent of 705,000 cubic feet, and on January 19 to the extent of 164,000 cubic feet.

The next question was as to what customers other than the Cement Company was cut off on November 12, 1940. I don't believe I stated it was November 12, but I believe I stated that it was in November, 1940, and I now find that it is November 12, 1940. The Cement plant was the only industrial customer cut off on that day, it being cut off between 9:00 and 10:00 p. m., on November 12 and remaining off until 8:00 a. m. on November 13.

The next question was—

The Trial Examiner: Just a moment, Mr. Hancock.

Mr. Lange, do you have any questions with regard to those cut-offs? Do you have any cross examination on that?

Mr. Lange: No, not on those.

The Witness: The next question was whether or not the Cement plant was operating on December 26, 1938. I stated that it was cut off and I wish to correct that statement. The Cement plant was actually operating at that time and was not cut off. The reason why it was not cut off, even though it was a peak day, was that the pressures delivered by Colorado Interstate Gas Company ranged from a minimum of 129 pounds to a maximum of 258 pounds, thereby providing sufficient gas to make it unnecessary to discontinue service to the Cement plant on that day.

The next question was in regard to earlier interruptions to industrial deliveries than those which I have mentioned in previous testimony. I have already mentioned the—strike that. In July 1932 at the time of the Jimmy Creek washout, all of the industrial customers were affected, although domestic service was maintained by resorting to gas in storage in the fine. The Cement plant was operating at that time and having been shut down it stayed down for a month.

By Mr. McCreery:

Q. The shutdown was occasioned by the shutoff?

A. The beginning of the shutdown was occasioned by the shutoff.

In the fall of 1934 all industries were required to discontinue the use of industrial gas for a period of about eight hours, however, at that time the Cement plant was not running. Slightly later, in the same year 1934, there was a further period of industrial gas delivery shut off for about eighteen hours at which time the Cement plant had been running and shut off, including the sugar plant.

In May 1935 there was a 28-hour shutoff period of all industrials, however, at that time the sugar plant was not operating.

In December 1935 there was a 5-hour period of outage on certain customers occasioned by a line of the Colorado-Wyoming Gas Company being broken by a blast. I assume that was in road construction work or some other type of construction work.

Recross Examination.

By Mr. Lange:

Q. Were those the main line industrials that you have referred to?

A. That is right. The most important one affected at that time was the sugar plant, it being off five hours.

On February 5, 1937, due as we were informed to a stoppage of the main line of the Colorado Interstate Gas Company or lines which supply the Colorado Interstate Gas Company of which I am not sure, as the result of hydrate stoppage in those lines all of the industrial customers were off for a period of sixteen hours. However, domestic service was maintained.

Q. Was any resale industrials maintained?

A. During a portion of the period the industrial deliveries for resale were only off for ten hours instead of the sixteen hours referred to on the main line industrials.

On February 9, 1937, due to a line being broken by a blast, all of the industrials were reduced in deliveries for a period of eight hours.

Q. You mean the main line industrials?

A. That is right.

Q. And in what way were the resale industrials affected?

A. Only for a period of three hours. The Cement plant, however, was not running in February at that time.

In the latter part of May, 1937, and the early part of June, 1937, due to a washout at the Little Perico in Texas, all main line industrial customers were off for a period of three and one-half days.

The industrial sales for resale were off for three days at that time. Domestic service, however, was maintained.

That, I believe, brings the interruption record down to date with the exception of a few minor interruptions purely local in character, such as the particular supply line being torn out by road construction work or items of that kind. In one case a truck load of cattle had its brakes become inoperative and the whole load of cattle ran into a measuring station and broke the lines. Aside from minor incidents of that kind, I believe I have named the major interruptions.

Q. I forgot to ask you, Mr. Hancock—if I might interpose right here—

A. I had one other—or, it's all right.

Q. Were there any interruptions at all in any domestic service since 1929?

A. The only interruption which comes to my mind, and it is not a total interruption, is a slight reduction in pressure in certain parts of Cheyenne during the January 1940 peak day. The town border pressure there with all industrials off and with even the high school building in Cheyenne off for heating purposes, there was a few customers affected at that time.

Q. All right, you had another item there.

A. Now, Mr. Gray asked a question as to the delivery pressures by the Colorado Interstate Gas Company on the day of the November 1940 peak day which was, as previously testified, on November 12, 1940, and on which day it was necessary to discontinue service to the Cement plant. The minimum pressure received from Colorado Interstate Gas Company on that day was 147 pounds, the pressure going as high as 217 pounds, which rather high pressure condition explains why all industrials did not have to be cut off.

(Vol. 28, pp. 3872-3880.)

Q. And you have assumed in connection with this investment that if a company were to construct a 6-inch main line from Arapahoe to Cheyenne that this would in your opinion be the estimated investment in such a line?

A. Yes.

Q. Both the plant and investment as well as the depreciated cost of such?

A. Yes.

Q. The depreciated cost of which would be $833,173?

A. That is right.

Q. As of the year 1930?

A. Is that a question?

Q. Yes.

A. I wouldn't say the depreciation would be the—that the depreciated plant and investment would be that amount as of the year 1930, but if these lines had been built as described in these years covered by this construction period, I believe that would closely represent the present depreciated plant and investment account.

Q. Of course, such a line does not in fact exist at the present time?

A. By no means.

Q. And you are not contemplating the construction of such a line for the company, are you, Mr. Hancock?

A. Not to my knowledge.

Q. Now, is the company contemplating the construction of such a line?

A. Not to my knowledge.

(Vol. 28, pp. 3922-3923.)

* * * * *

In the testimony of H. P. Davis, Secretary of Colorado-Wyoming Company (Vol. 83, pp. 12,427, 12,428) and in Exhibit 242 introduced by him, appears the following identification of the contract and franchise provisions stipulating priority of domestic users over industrial users:

"Preference for domestic users and 'cut off' or 'shut off' of industrials if necessary, to supply the demands of domestic users is a fundamental characteristic of the Colorado-Wyoming Gas Company system and of its operations. Such preference and 'shut off' is provided and

required in several ways; and as shown by sundry contracts in evidence in this case:

1. Contract between Colorado Interstate Gas Company and Colorado-Wyoming Gas Company.

2. Contracts between Colorado-Wyoming Gas Company and Public Service Company of Colorado.

3. By virtue of the respective contracts between Colorado Interstate Gas Company and Public Service Company of Colorado, Pueblo Gas and Fuel Company and Colorado-Wyoming Gas Company the cities of Denver and Pueblo are given priority over Colorado-Wyoming Gas Company.

4. The various franchises to the distribution company granted in Arvada, Berthoud, Boulder, Fort Collins, Golden, Greeley, Johnstown, Loveland, and Longmont, Colorado, to supply natural gas purchased from Colorado-Wyoming Gas Company in the cities and towns named, all provide for such preference 'cut off' or 'shut off' in substantially the same language as follows:

> 'The rates to be charged by the company for natural gas service to industrial users for heating, manufacturing, power and other purposes, may be lower and different from those charged for domestic purposes, and the company may contract with industrial users for the sale of such natural gas, provided that all such contracts contain a "cut off" clause which shall recognize the preferred rights of domestic users over industrial users.'"

In all its sales contracts, Colorado Interstate Company has provisions giving preference to domestic over industrial consumers (Ex. 7 D, 7 E, 7 H, 7 I, 9, 25, 39), in substantially the same language embodied in the sales contract of Colorado Interstate Company with Colorado-Wyoming Company. (Ex. 101, pp. 13-14), the pertinent provision of which is as follows:

> "It is agreed that in case of shortage either temporarily or permanently, of natural gas and necessity for curtailment of service to any classes of consumers, the demands of domestic consumers of the Seller, the Buyer and/or of

other distributing customers to which the Seller or Buyer may sell natural gas, are to be preferred over service to industrial consumers, and of the amount remaining, deliveries, if any, for industrial consumers served by the Buyer shall be such part as the requirements of such industrial consumers bear to the requirements of industrial consumers of the Seller, the Buyer and of other distributing customers to which the Seller may sell natural gas; provided, however, that such domestic consumers' preference and such right to receive natural gas for industrial users shall not be exercised so as to deprive the Colorado Fuel & Iron Company of the volume of natural gas needed to complete open hearth heats then in jeopardy and to keep its furnaces warm during extreme domestic demand upon the Seller's pipe line, or so as to deprive any other industrial or commercial consumer which requires a small proportion of its normal demand to prevent damage to its appliances."

(6) *Shut-offs and Curtailment of Industrial Service.*

"Shut-off" or "curtailment" of both direct main line industrial consumers and of indirect industrial customers served under resale contracts of distributing companies, in order to satisfy the demands of domestic consumers, have occurred most frequently in the years 1938, 1939 and 1940.

Hancock testified specifically with respect to the reason for interruption of industrial service as follows:

"They were cut off, asked to discontinue, because of the requirements of other customers, domestic house heating customers of the companies to whom gas is sold by Colorado-Wyoming Gas Company."

(Vol. 28, p. 3842.)

He further testified:

"In July, 1932, at the time of the Jimmy Creek washout, all of the industrial customers were affected, although domestic service was maintained by resorting to gas in storage in the line. The cement plant (at Laporte) was operating at that time, and having been shut down it stayed down for a month (Vol. 28, p. 3876).

In the fall of 1934 all industrials were shut off for a period of about 8 hours, at which time the cement plant was not running. A little later in the same year there was a further period of shut-off of industrials for about 18 hours, at which time the cement plant had been running and was shut off as was also the sugar plant of the Great Western Sugar Company at Johnstown, Colorado. In May 1935, there was a 28-hour shut-off of all industrials, the plant of the Great Western Sugar Company not being in operation at that time however (Vol. 28, pp. 3876, 3877).

February 5, 1937, due to a stoppage of the main line of Colorado Interstate Company, all industrial customers were cut off for a period of 16 hours; domestic service, however, was maintained. During this cut-off the industrial deliveries under resale contracts were shut off for only 10 hours, as compared to the 16-hour shut-off of main line direct sale industrials. On February 9, 1937, due to a line break occasioned by a blasting, main line industrial deliveries were reduced for a period of 8 hours and industrials under resale contracts for a period of 3 hours. At this time the cement plant was not running (Vol. 28, pp. 3877, 3878).

In May and June, 1937, due to a washout on the Texas line south of Denver; all main line industrial customers were cut off for three and one-half days. Domestic service, however, was maintained (Vol. 28, p. 3878). Main line industrials were cut off on December 26, 1938, at which time the cement plant was being operated and was not cut off because delivery pressures were from 129 pounds to 258 pounds (Vol. 28, pp. 3847, 3848, 3874, 3876, 3880).

On February 9, 1939, service was curtailed to the industrials (Vol. 81, p. 12,068).

On January 18th and 19th, 1940, all main line industrials were shut off and resale industrials were curtailed January 18th, to the extent of 705 M. c. f., and on January 19th to the extent of 164 M. c. f. (Vol. 28, pp. 3843, 3875; Vol. 81, p. 12,066).

With reference to the foregoing, on cross-examination, Mr. Hancock testified:

"Q. What was the nature of that and why was the service interrupted?

"A. Peak loads on the system, wholly due to sales for resale and public authority customers. All industrial customers were cut off.

"Q. What was the length of that interruption?

"A. I cannot give you that length of interruption in hours but I can say that on that day that all of the main line customers were cut off early in the morning and by noon or early afternoon that cut-off was extended to the small industrial customers served even by distributing companies."

(Vol. 28, pp. 3843, 3844.)

On November 12, 1940, the cement plant was cut off from 9:00 A. M. to 10:00 P. M., and remained off until 8:00 A. M. on November 13th. No other industrials were cut off on that day (Vol. 28, pp. 3842, 3875, 3879).

Deliveries to the cement plant were shut off December 12th from 9:00 P. M. until 8:00 A. M. the 13th, 1940, to protect the Cheyenne service. The curtailment was 1200 M. c. f. (Vol. 81, pp. 12064, 12065).

Upon cross-examination (Vol. 28, p. 3845) he stated:

"Q. Are these interruptions that you are speaking of all involuntary as to all parties concerned—all purchasers?

"A. They are unavoidable. The customers don't desire to be interrupted but it is necessary that they be interrupted and they have agreed that they can be interrupted.

* * * * *

"Q. Is it not a fact, Mr. Hancock, for the purpose of satisfying the priority demands of this Cheyenne service that industrials were cut off last night on this line?

"A. That is true.

"Q. Including the Colorado Portland Cement Company?

"A. That is true. The peak day requirement is the determining factor. If Cheyenne needs so many million feet of gas on the peak day, that portion of the system's capacity has to be dedicated to that capacity and can be sold to no one else.

"Q. That was done last night?
"A. Yes."

(Vol. 29, pp. 3956, 3957.)

"Q. Mr. Hancock, you stated that the service for the cement plant was interrupted yesterday (December 12, 1940). Was it cut off entirely or just reduced?

"A. It was off at 5:30 o'clock p. m., yesterday afternoon except that they were notified that they could use temporarily a small amount of gas just to keep the kilns hot. It was on again at 10:15 p. m. but they did not resume full load conditions until 1:00 a. m.

"Q. You mean the Cement plant voluntarily did not resume full load condition?

"A. No, they did not restore their full heat until that time.

"Q. They could not?

"A. And it was again curtailed but not fully cut off at 9:30 this morning.

"Q. At what pressure was gas delivered to your company yesterday by the Colorado Interstate Gas Company?

"A. I have not been able to secure those pressures but the pressures at Arvada station intake were comparatively high all day and all night, the necessity of cutting the Cement plant off being entirely the transmission facility situation between Arvada station and the 6-inch line north of Fort Collins from which the Cement plant receives its supply.

"Q. It was not due to any low pressure gas at the point of delivery to your company?

"A. I do not believe it was, because at 5:00 o'clock yesterday afternoon, just before the cement plant was required to shut off, the Arvada suction pressure was 167 pounds which would indicate a considerably higher pressure at the Arapahoe measuring station.

"Q. Was any resale industrial cut off?

"A. No, sir.

"Q. What was the pressure at the point of delivery at Cheyenne yesterday?

"A. At 5:00 o'clock the town border pressure was 56 pounds; at 6:00 o'clock it had dropped to 40 pounds; at 6:30 o'clock it had dropped to 16 pounds. It was back to 137 pounds this morning at 8:00 o'clock. At the time when the

pressure was low at Cheyenne, as just mentioned, all four compressing units at the Wellington station were operated.

"Q. Was the Arapahoe compressor station operated?

"A. It was. —Pardon me, it was not. I had the Arvada station in mind when I answered you.

"The Arapahoe station was not operating. Under the conditions of pressure delivery from Colorado Interstate Gas Company it was not necessary to operate the Arapahoe station during the period I referred to.

"Q. But the other two stations were?

"A. They were.

"Q. Were all units of the two stations in operation?

"A. All units at the Wellington station were operating; four units at the Arvada station were operating during the evening hours yesterday; two units at Arvada were operating during the early morning hours and four units again this morning."

(Vol. 29 pp. 3966-3968.)

Again (Vol. 28, p. 3879) under cross-examination, the witness testified:

"Q. Were there any interruptions at all in any domestic service since 1929?

"A. The only interruption which comes to my mind, and it is not a total interruption, is a slight reduction in pressure in certain parts of Cheyenne during the January 1940 peak day. The town border pressure there with all industrials off and with even the high school building in Cheyenne off for heating purposes, there was a few customers affected at that time."

(See Vol. 81, p. 12,062.)

Mr. Hancock also testified with respect to the growth of peak-day demands (Vol. 28, pp. 3868-3869):

"Q. Do you know whether or not it is a fact that there have been very definite and emphatic protests and objections by certain industrial users even with respect to the infrequent interruptions which ha e taken place in their use?

"A. I do.

"Q. In relation to what companies in particular?

"A. Particularly the Great Western Sugar Company.

"Q. At Johnstown.

"A. At Johnstown.

"Q. Is it not a fact, Mr. Hancock that in the period from 1939 to 1940 the substantial increase and anticipated total volume of sales for resale will definitely increase in higher peak day demands from year to year under normal weather conditions?

"A. That is true. Much of the added business is of a peak load nature."

The Commission's witness, Claude Lester, offered certain exhibits (including Nos. 251, 307 and 308) and testified as follows:

CLAUDE R. LESTER called as a witness by and on behalf of the Federal Power Commission, bein first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Lange:

Q. Please state your name.

A. Claude R. Lester.

Q. Where do you reside, Mr. Lester?

A. I reside at Portland, Oregon.

Q. What is your occupation or profession?

A. I have followed the rate game and regulatory.

Q. Regulatory matters?

A. Yes, regulatory matters. I am a professional engineer in the state of Oregon, registered to practice there as well as a qualified engineer.

Q. By whom are you presently employed?

A. By the Bonneville Power Administration.

Q. How long have you been so employed?

A. Since the middle of May last year.

Q. 1940?

A. 1940.

Q. Were you ever employed by the Federal Power Commission?

A. Yes, I was employed by the Federal Power Commission before going to Bonneville.

Q. How long were you so employed?

A. For over a year.

Q. Have you prepared a written statement setting forth your experience and qualifications?

A. I have.

Q. Please read that into the record.

A. "In 1914 I graduated from the University of Michigan with a Bachelor of Electrical Engineering degree. While at the University I took advance courses in accounting and a course in 'Utility Regulations' given by Dean Cooley, and Professors Riggs and Friday.

"After receiving my degree I entered the employment of the Grand Trunk Railway as an electrician. As an employe of this company I assisted in construction of electrical transmission and distribution lines, installation and maintenance of electrical equipment under the Motive Power Department at the electrically operated shops at Toronto and Montreal, Canada, and Battle Creek, Michigan, and the power plant and transmission line at Fort Huron for the Serina Tunnel. I had charge of the evaluation of all electrical lines and equipment under the Motive Power Department of the Western Division of the Grand Trunk Railway pursuant to orders of the Interstate Commerce Commission.

"In 1917 I enlisted in the U. S. Army, serving with the Fifth U. S. Engineers. In France I had charge of the operation of the electrical light plant for the Seventh Division Headquarters and *intalllation* of other electrical light plants in our Army area.

"In 1919 I entered the employment of the United States Emergency Fleet Corporation in Portland, Oregon, as valuation engineer. The work consisted of the evaluation of surplus shipbuilding material, stores, and equipment.

"In 1919 I was employed as engineer by the Southern Pacific Company, and later by the Oregon-Washington Railway and Navigation Company to assist in bringing up to date the Interstate Commerce Commission's valuation pursuant to I. C. C. Order No. 4.

"In 1920 I was employed by the Public Service Commission of Oregon, the name of which was later changed to Public Utilities *Commissioner* of Oregon. During the seventeen

years in the State regulatory service I served as assistant engineer, engineer, auditor, principal engineer, chief engineer, and director of engineers. At first I assisted in the investigation of the books and operations of public utilities, valuations, and rate analyses. As chief engineer and director of engineers I had charge of valuations of public utility property and auditing of the public utilities' books. Also had charge of rate studies and preparations of factual evidence in formal proceedings before the Commission and charge of the studies of other problems confronting the engineering and auditing department of a state public utility regulatory body.

"In 1939 I entered the employment of the Federal Power Commission as associate rate investigator. Beside the rate analysis work in this case, I prepared rate analyses in a number of other natural gas *matter* for the Commission.

"In May 1940 I entered the employment of the Bonneville Power Administration at Portand, Oregon, as rate analyst. My work with the said Administration, at present, consists of analyses of various types of electric rates used by various private and public utilities and studies of additional use to which electric energy may be devoted.

"I am a registered engineer authorized to practice professional engineering in the State of Oregon, No. 1441."

Q. Mr. Lester, during the time that you were in the employ of the Federal Power Commission, what particular branch of the Commissioned service were you connected with?

A. With the rate department of the Federal Power Commission and in rate work and rate investigation.

Q. While you were employed, did you have any assignment in connection with the preparation of the study of the rates of Colorado-Wyoming Gas Company in this proceeding? Also of related matters to rates?

A. I did.

Q. Did you prepare an exhibit in connection with that study?

A. I did.

Q. I will ask you whether this is the exhibit.

A. That is the exhibit.

Mr. Lange: Will the reporter please identify it?

The Trial Examiner: What is the title of it, Mr. Lange?

Mr. Lange: "Report on the Review and Analysis of the Contracts, Rates and Billings of the Colorado-Wyoming Gas Company.

The Trial Examiner: It will be marked for identification as Exhibit No. 251.

(Exhibit 251, Witness Lester, marked for identification.)

By Mr. Lange:

Q. Mr. Lester, in connection with the preparation of that exhibit, have you prepared a written statement describing it and giving its essential parts?

A. I have.

Q. Will you please read that statement into the record?

A: "Operations—General.

The Colorado-Wyoming Gas Company, hereinafter frequently referred to as the Colorado-Wyoming Company, owns a pipe line system which begins at a point of connection with the Colorado Interstate Gas Company near Littleton, Colorado and extends north into the state of Wyoming to Cheyenne. Natural gas is sold from this pipe line at several city gates to other companies for resale and also directly to several large industrial customers for their own use.

The Colorado-Wyoming Company's main source of natural gas supply is the Colorado Interstate Gas Company. Small amounts of gas are purchased from the Goodstein Pipe Line Company. The gas which is purchased from the Colorado Interstate Gas Company is in turn purchased by that company from the Canadian River Gas Company and produced in the Texas Panhandle field. The small amounts of gas purchased from the Goodstein Pipe Line Company are produced by that company in the Berthoud, Colorado field.

The gas which the Colorado-Wyoming Company delivers to its customers is subject to the terms and conditions under which the company's supply of gas is received. It is to be

commercial gas as produced in its natural state, except that gasoline and helium may be extracted.

The Colorado-Wyoming Company's city gate sales and the general use made of the gas is set forth below. The contracts and supplements covering these sales, which were filed with the Commission pursuant to the Natural Gas Act, are listed in Table No. R-2.

(1) Gas is furnished to the Public Service Company of Colorado at the city gates of Fort Collins, Loveland, Berthoud, Johnstown, Longmont, Boulder, Brighton, Fort Lupton, Arvada, Golden and Denver Fringe, Colorado, for resale for domestic, commercial and industrial use.

(2) Gas is furnished at Cheyenne, Wyoming to the Cheyenne Light, Fuel and Power Company. This gas is for general distribution purposes and also for use in the purchaser's Power Plant.

(3) Gas is furnished at Greeley, Colorado to the Greeley Gas and Fuel Company. This gas is for general distribution uses in the town of Greeley.

(4) Gas is furnished near Loveland, Colorado to the Highway Gas Company. This gas is for resale to certain rural customers of the purchaser.

The industrial companies to who the Colorado-Wyoming Company sells gas and the general use made of the gas are shown below. The contracts covering these sales are listed in Table No. R-3.

(1) Fort Collins Producing Corporation near Fort Collins, Colorado—for oil drilling operations during times when the purchaser is unable to produce sufficient gas from the Wellington field.

(2) Adolph Coors Company, near Golden, Colorado—for fuel requirements in malt driers and pitch burners and for other uses at the purchaser's brewery.

(3) Golden Fire Brick Company, near Golden Colorado —for kiln fuel and incidental plant use.

(4) Denver Pressed Brick Company, five miles west of Loveland, Colorado—for kiln fuel and incidental plant use.

(5) Great Western Sugar Company, Johnstown, Colorado—to supplement fuel requirements.

(6) Colorado Portland Cement Company, Laporte, Colorado—for use incidental to the manufacture of cement, including kilns and driers to the exclusion of all other fuels.

(7) Kuner-Empson Company, near Brighton, Colorado—for boiler fuel and incidental plant uses.

(8) Producers Canning Company, Fort Collins, Colorado—for general industrial use in the purchaser's canning plant.

(9) Public Service Company of Colorado, Valmont, Colorado—for boiler fuel and incidental plant use. This service is to be ready for use on not more than 60 minutes' notice in case of emergencies.

(10) Denver Board of Water Commissioners, Jefferson County, Colorado—for boiler fuel and general plant use.

(11) United States Government, Fort Logan, Colorado, Fort Francis E. Warren, Wyoming and the Federal Correctional Institution near Fort Logan.

This review and analysis shows that generally the Colorado-Wyoming Company holds itself out to supply gas under its sales contracts:

'to the full extent that it may be able to do so through the exercise of reasonable care and diligence in the procuring of natural gas from its purchase contracts, and in the transportation thereof through its pipeline to the point of delivery and at such pressures and for such period of time as natural gas is available.'

Table No. R-4 shows sales data for the calendar years 1937, 1938 and 1939. These data by class of service and for each delivery point are:

(1) Quantity of gas sold at the selling pressure base and at a uniform pressure base of 14.65 pounds per square inch.

(2) Revenues received.

(3) Load factor.

(4) Average revenue per MCF at the selling pressure base and at a uniform pressure base of 14.65 pounds.

(5) The ratio of the volume sold at each delivery point to the total volume sold.

(6) The ratio of the revenue received at each delivery point to the total revenue received.

Summarized by class of service the information shown by Table No. R-4 is: MCF at 14.65 pounds per square inch.

	Price Cents/MCF	Quantity % of Total	Sales Revenues % of Total
		1937	
Domestic Gas	44.62	37.80	52.59
Industrial City Gate	26.84	13.44	12.32
Total City Gate	39.96	51.24	39.91
Main Line Industrial	18.09	48.45	29.93
General Pipe Line Delivery	14.77	.31	.16
Total	29.29	100.00	100.00
		1938	
Domestic Gas	43.93	42.50	60.93
Industrial City Gate	26.79	14.23	12.45
Total City Gate	39.63	56.73	73.38
Main Line Industrial	18.88	42.96	26.47
General Pipe Line Delivery	14.91	.31	.15
Total	30.64	100.00	100.00

	1939		
	Price Cents/MCF	Quantity % of Total	Sales Revenues % of Total
Domestic Gas	43.86	38.76	58.58
Industrial City Gate	26.57	12.29	11.25
Total City Gate	39.69	51.05	69.83
Main Line Industrial	17.89	48.79	30.08
General Pipe Line Delivery	14.92	.16	.08
Total	29.02	100.00	100.00

During the year 1939 the city gate sales amounted to 51.05% of the total volume of gas sold and 69.83% of the total revenues received. During the same period the main line industrial sales were 48.79% of the total volume sold and only 30.08% of the total revenues received.

On the uniform pressure base of 14.65 lbs. the price paid during 1939 for domestic and space heating gas by the three largest distributing customers of the Colorado-Wyoming company was:

	First Block of Domestic Rate Cents per MCF	Last Block of Domestic Rate and Space Heating Rate Cents/MCF	Average Revenue Cents per MCF
Public Service Co. of Colo.	46.20	41.56	43.17
Greeley Gas and Fuel Co.	46.36	41.72	44.17
Cheyenne Light, Fuel & Power Co.	47.64	42.88	44.89

The Cheyenne Light, Fuel and Power Company is paying more per MCF for the gas which it resells to commercial and industrial consumers. The comparative average revenues paid during 1939 are:

	Average Revenue for Commercial and Industrial Gas
Public Service Company of Colorado	24.50c per MCF
Greeley Gas and Fuel Company	35.87c per MCF
Cheyenne Light, Fuel & Power Company	36.04c per MCF

The Colorado Portland Cement Company is the main line industrial customer of the Colorado-Wyoming company farthest from the source of supply. However, this company pays the lowest average main line industrial price for its gas. The comparative average revenues from main line industrial customers for the year 1939 are:

At 14.65 pounds per square inch

	Average Revenue Cents/MCF
Denver Board of Water Commissioners	24.86
Adolph Coors Company	22.46
Golden Fire Brick Company	18.95
Public Service Company of Colorado	42.70
Kuner-Empson Company	23.74
Great Western *Sugas* Company	21.83
Denver Pressed Brick Company	21.63
Colorado Portland Cement Company	14.10
Producers Canning Company	44.28
Continental Oil Company	20.56

Priority of Service.

The contracts with the Public Service Company of Colorado, the Cheyenne Light, Fuel and Power Company and the Greeley Gas and Fuel Company provide that,

'the demands of domestic consumers of the Vendor, the Vendee and/or of other 'distributing customers to which the Vendor or Vendee may sell natural gas, are to be preferred over service to industrial consumers; provided, however, that such domestic consumers' preference shall not be exercised so as to deprive the Colorado Fuel & Iron Company of the volume of natural gas needed to complete open hearth heats then in jeopardy and to keep its furnaces warm during extreme domestic demand upon the Vendor's pipe line, or so as to deprive any other industrial or commercial consumer which requires a small proportion of its normal demand to prevent damage to its appliances.' (FPC No. 2, pp. 11 and 12; FPC No. 3, pp. 11 and 12; FPC No. 4, pp. 10 and 11)

The Colorado Fuel and Iron Corporation mentioned above is a main line industrial customer of the Colorado Interstate Gas Company.

The agreements covering the sale of gas to the Highway Gas Company and the United States Government make no mention as to the relative priority standing with other sales of the Colorado-Wyoming company.

The agreements with the Adolph Coors Company, Board of Water Commissioners, Golden Fire Brick Company, Colorado Portland Cement Company, Kuner-Empson Company and the Producers Canning Company provide that:

'The Seller (Colorado-Wyoming Gas Company) does not by this contract undertake to furnish the said Buyer a full and uninterrupted supply of gas for the period named herein, but only to furnish such a quantity and for such a length of time, limited by the terms hereof, as the wells and pipelines of the Seller are reasonably capable of supplying, and subject to Seller's right to require a discontinuance of the use of its gas by the Buyer, in whole or in part, without notice, at any time it may deem it necessary by reason of accidents, breaks in line, repairs, shortage of gas, requirements of domestic customers or any reasonable cause whatever and without prejudice to its rights to continue delivery to other parties, and without subjecting the Seller to any claim for damages for such discontinuances' (A.C.C., Sec. 4; B. W. C., Sec. 4; G.F.B.C. Sec. 4; C.P.C.C., Sec. 5; K-E.C., Sec. 4; P.C.C., Sec. 4)

'In the event the demands of domestic consumers shall necessitate cutting off, stopping, or reducing the delivery of natural gas to the Customer (Denver Pressed Brick Company and the Great Western Sugar Company), the determination by the Company of such necessity shall be final and binding upon the Customer.' (D.P.B.C., Sec 5; G.W.S.C., Sec. 5)

The agreement with the Public Service Company of Colorado for the sale of boiler fuel gas to the Valmont plant provides that:

'Vendor (Colorado-Wyoming Gas Company) agrees to maintain its plant and system in such condition as to be

able, on not more than sixty minutes notice from Vendee, to begin delivery of gas for boiler fuel purposes in quantities not exceeding a rate of seven million (7,000,000) cu. ft. per day, limited by the requirements of Vendor's other customers, its existing facilities, and its ability to obtain gas from its sources of supply.' (P.S.C.C., Sec. 1)

(Vol. 86, pp. 12877-12891.)

* * * * *

When the Colorado-Wyoming Company constructed its main line from Denver to Fort Collins it provided sufficient capacity in the line to serve gas to the Valmont Power Plant of the Public Service Company of Colorado. This was done at the request of this purchaser. In order to serve this plant it was necessary to change the construction plans for the line from Arvada to Boulder Junction from 8 inches to 10 inches, and increase the line from Boulder Junction to Valmont Junction from 6 inches to 8 inches. The laterals from Valmont Junction to serve Boulder and the Valmont plant are 6 and 8 inches.

The cost of changing the lines to meet the requirements was estimated to be $78,000. This line is of sufficient size to carry 1,000,000 MCF of gas annually and the costs included the branch line from Boulder Junction to Valmont and the installation of a measuring station. It was determined that upon the base load of 1,000,000 MCF annually the business could be handled at a profit if gas was sold at not less than 2.3c per MCF above the purchase price of the gas from the Colorado Interstate Gas Company. The breakdown of the computation was:

4% depreciation on $80,000	$ 3,200
6% return on $80,000	4,800
Compressing cost on 1,000,000 MCF estimated at 1c per MCF	10,000
Taxes and other operating costs estimated at	5,000
Total	$23,000

After deliveries began to the Valmont plant, experience proved that the plant did not use 1,000,000 MCF annually and the Public Service Company of Colorado could give no assurance that it would use such an amount. Therefore, the

rate was changed, the parties agreeing to a 'Readiness to serve charge', equal to the depreciation at 4% and a return on the investment at 6%, making a total charge of $8,000 per year. With this 'Readiness to serve charge' it was estimated that gas could be delivered at 1.5 cents per MCF above the purchase price.

The rate as applied today is a 'Readiness to serve charge' of $8,000 per year to be paid in twelve equal installments. In addition, a charge of (a) for gas used for miscellaneous fuel requirements—2.5 cents per MCF above the purchase price of such gas, and, (b) for gas used for boiler fuel requirements—1.5 cents per MCF above the purchase price of such gas. This rate schedule is to remain in effect until October 31, 1949.

(Vol. 86, pp. 12898-12900.)

Q. Now, Mr. Lester, in connection with Exhibit 251, which you have described, about what period of time did you devote to that study and the preparation of that exhibit?

A. I devoted a considerable period of time to that study. I was out here in 1939 for a period of two or three months and I devoted some of that to the Colorado-Wyoming and also again I was out in September or October of 1940 and devoted some more time to the study.

Q. This exhibit carries your studies down through what year?

A. Generally through 1939, down into 1940. There is some reference to certain charges that were changed in 1939.

Q. Generally the billings and the quantities of gas set forth as sold to cover periods down through December 31, 1939?

A. That is correct.

Q. It is only in a few instances that you have covered anything beyond December 31, 1939?

A. That is practically the only instance is in reference to the billings of the company as made as regarding tariff. The date of those I have tried to keep up to date.

Q. Then it is down through December 31, 1939, on all

matters excepting where you have indicated that filings of rate schedules have been made subsequent to December 31, 1939?

A. That is correct.

Q. In all other respects the purpose of the exhibit is to bring the matters down through December 31, 1939?

A. That is correct.

Q. And in connection with the preparation of that exhibit you went through the company's books and records and got certain of your information directly from those books and records?

A. Yes, I had access to the books and records and I went to the books and records to verify information and to get information therefrom.

Mr. Langé: I believe that is all for the present.

Cross Examination.

By Mr. McCreery:

Q. Mr. Lester, what is the purpose of this exhibit?

A. It is to show the charges and rates that the company actually charges on its books.

Q. What does it show?

A. It shows what the charges have been.

Q. What conclusions did you undertake to present by this exhibit?

A. Set them forth for the information that they might contain for the Commission as to what the company has actually charged on the books and the rules and regulations surrounding the rates that it has used in setting up its billings to its respective customers and condensed them into a yearly basis.

Q. It is really your construction of what the operations have been, isn't it?

A. No, it is actually the construction.

Q. You mean that your statement here is other than your conclusion?

A. That is a statement of the things that have been billed and the quantities of gas sold as reported by the directors of the company.

Q. You arrive at certain conclusions, do you not, in this statement and this exhibit?

A. I possibly have arrived at certain conclusions.

Q. If you have, they are your own?

A. That is right.

Q. Now, will you tell me what your definition of load factor is?

A. Load factor is the variation of the average load from the maximum load over a period of time expressed generally in a percentage.

Q. Now, what period of time did you use?

A. One year's time.

Q. Now, in connection with the industrials you used the full period of a year irrespective of the portion of the year in which the industrials were actually utilizing gas, did you not?

A. Yes. The load factor of mine was for a year. Now, I didn't define my load factor as only using that period of a year deducting from the total year only that period of the year for which it had been used. If I had of, I would have got a load factor for perhaps 200 days or 300 days.

Now, we have load factors for months, weeks, days, years, five years, ten years—any period. The stated period of time of mine is a year.

Q. I just asked you what period you used.

A. I just wanted to protect from the question that you may lead to that you are talking of a load factor or perhaps of an output factor. You are perhaps talking of an output factor. I just wanted to keep that straight.

Q. Now, the answer is that you gave no consideration to actual days upon which industrials took gas but treated them as though they took it 365 *years* a year?

A. I followed the definition of the load factor of a year.

Q. That's what you did?

A. I used it for a year, yes.

Q. On that basis?

A. Yes. I wasn't building up an output factor. That's what I'm trying to keep you straight on, your load factor and output factor.

Q. Now, you state on Page 8-A of your statement that "No records have been kept of occasions when domestic peaks were of sufficient magnitude so that industrial cases were necessarily reduced during the peak load periods." What do you mean by that statement?

A. Why, the company had kept no records, only of the information that they had furnished me and which is a table in the exhibit and that is all that they said they had records and data upon.

Q. Aren't you mistaken on that, Mr. Lester? All of the meter charts would show exactly what curtailments had been made to satisfy domestic requirements. While they don't have any book records of it, their metered charts would show that, would they not?

A. I believe this was taken directly from the information furnished to me from the company and a direct quotation from them.

Q. I asked you if that information isn't available from metered charts.

A. It may not be. The company informed me that it was not, said no data was kept of it.

Q. No data given?

A. I am sure that statement was taken directly from the company.

Q. These various communications that were made to the Federal Power Commission on that very subject—here is a letter of December 11, 1939, addressed to Mr. O'Connor, Federal Power Commission, in answer to a letter by him to the company of date October 20th, in which the writer, the Vice President and General Manager, says:

"I also have in mind several occasions when the domestic peaks were so heavy that industrial plants were asked to reduce their takes during the period of the peak (from one to three hours) after which they were permitted to resume full load operations."

Now, then, the next sentence is: "No record of such instances has been kept and we are unable to furnish dates and amount of reduction on those occasions."

Did you ask at that time or any other time to see the meter charts?

A. No, I assumed that one request for information would have the same effect as two. I didn't see that two requests would have any more benefit than one, and my quotation I used in there reflects directly—refers directly to that latter sentence that you read from the letter.

Mr. Lange: What is the date of that letter, Mr. McCreery?

Mr. McCreery: That is December 11, 1939, Mr. Lange.

Mr. Lange: Do you have that correspondence with you, Mr. Lester?

Mr. McCreery: His quotation refers to the same letter that talks about industrials to take care of domestic peak demands.

The Witness: I have that.

Mr. Lange: In order to make the record complete, Mr. McCreery, you might read that whole letter into the record.

Mr. McCreery: It will be quite all right, but I am not interested in it at this particular time. I have got some more. I have no objection to it, but I am interested in this witness' statement on Pages 8 and 8-A:

"There have been no interruptions in the Colorado-Wyoming Gas Company's domestic and industrial service at the same time, although domestic service on branch lines has at times been interrupted due to line failure. Industrial service has at times been totally interrupted or reduced so that domestic service could be maintained when washouts or other accidents have affected the pipe line of the Colorado Interstate Gas Company."

Now the facts are, are they not, Mr. Lester, that there has been curtailment and shutoff of industrials to satisfy domestic peak demands when there has been no accidents or washouts of any kind, just simply because there wasn't enough gas in the line to satisfy both demands?

The Witness: The company did not so furnish me that information and they say it was not of record nor did they know the exact time or period when it did occur.

By Mr. McCreery:

Q. In the very letter you are relying on they do state just what I read, do they not, where it says: "I have also in mind several occasions when the domestic peaks were so heavy that industrial plants were asked to reduce their takes during the period of the peak (from one to three

hours) after which they were permitted to resume full load operations."

A. He said he had that generally in his mind but he couldn't put his finger on any point. Sometimes the memory isn't quite so good and you have to get down to the actual date in order to nail it.

Q. That is what we are undertaking to do right now, Mr. Lester.

A. So I based mine on the information furnished me by the company.

Q. Well, do you know as a matter of fact whether or not there were such curtailments and cutoffs to satisfy peak demands of domestic consumers?

A. They didn't furnish it to me at that time.

Q. I asked you if it is a fact.

A. At the time that letter is written?

Q. Yes.

A. No, not to my knowledge, and no information was furnished me by the company, although it was definitely requested that it be furnished. I was relying on the company's information.

Q. The answer is in this letter that there were those shutoffs.

A. He couldn't place it. I don't know whether it is or whether it is not. He says, "Oh, yes, I can recall to mind," but he hadn't recalled it to mind when it was.

Q. Are you familiar with similar correspondence between the company and the regional director in the year 1940?

A. I think I have seen that correspondence. Now, definitely I don't know whether I am thinking of the same correspondence that you are talking about there because I haven't the correspondence you are referring to before me.

Q. I will identify it very shortly. Your exhibit is dated October 1940?

A. Yes.

Q. Did you ever read a letter of date February 25, 1941, for instance, in answer to a letter of date February 24th, 1941, in relation to shutoffs to supply domestic peaks during certain portions of the year 1940?

A. When did the date of the shutoffs begin?

Q. These were late in 1940, subsequent to the date of your exhibit.

A. Yes, I have seen that.

Q. And that letter you recall indicated that on November 12 and 13, 1940, the Cement plant, to protect the Cheyenne load during severe cold, was curtailed and the plant ordered out on November 12th at 9:00 p. m., and service resumed at 8:00 a. m., November 13th and on December 12th to 14th, 1940, the Cement plant was curtailed during the period of December 12th, 13th and 14th; from the 12th from 5:00 p. m. to 10:30 p. m., curtailed 800 Mcf.; on December 13th from 10:00 a. m. to 6:00 p. m., curtailed 1500 Mcf., and that on December 14th, rather than suffer further curtailments, they shut down completely at 6:40 a. m. of that day? Did you see that letter?

A. Yes.

Q. You didn't desire to embody it?

A. I was restricting it to the period of that time in my exhibit. If you want to bring that up to date and include that information, it's all right with me. Had I had it I would have included it.

Q. Now, did you also see a letter of May 29th, 1940 in answer to a letter of May 9th, 1940 in which the company stated:

"In our letter of December 11, 1939 addressed to Mr. J. V. O'Connor, we called attention in the last paragraph to the possibility that all industrial loads might have to be shut off during a peak winter day. On January 18th and 19th, 1940, that very thing took place. All industrial loads were ordered off at 9:30 a. m. on January 18th and distribution companies asked to take all steps possible to conserve the gas supply. Public Service Company reported the curtailment of industrial loads near Denver, and Cheyenne Light, Fuel & Power Company reported curtailments at Cheyenne.

"Curtailments to our industrial customers lasted for about thirty hours and were estimated at 1270 Mcf.

"Public Service Company reported curtailments of 717 Mcf., and Cheyenne Light, Fuel & Power Company reported curtailments totaling 152 Mcf. at Cheyenne. Low pressure experienced on the Cheyenne distribution system was reported to have resulted in several low pressure complaints."

Did you see that letter at or about the time it was received by the Commission which was some months prior to your

exhibit, the date of your exhibit and apparently a considerable time before you completed your statement?

A. No, I didn't see it before that time, no.

Q. When did you put these typewritten sheets into your written statement?

A. I put them in sometime in October 1940.

Q. 1940?

A. Yes.

Q. Well, this particular Page 8 I talked about is one of these typewritten sheets, so that in October it was available at the offset of the Commission, the very thing that you say didn't exist so far as your Page 8 and Page 8-A is concerned.

A. I would like to have that letter before me.

Mr. Lange: That refers to 1940.

Mr. McCreery: That's right.

The Witness: I said I was speaking of the statistical part in there of your interruptions at the end of 1939. My statistical part of it doesn't carry anything beyond 1939 and wouldn't have any reference to 1940 because the statistical part wasn't in there.

By Mr. McCreery:

Q. Even though you prepared these sheets in 1940, you weren't dealing with the 1940 conditions or any other conditions than you state you had used originally, is that correct?

A. That is correct.

Q. So in the light of subsequent events which aren't present in your study, your statement at Pages 8 and 8-A would have to be considerably revised, would it not?

A. Well, now, it says here the Public Service Company reported the curtailment and the Cheyenne Light, Fuel & Power Company reported a curtailment of gas, but I just don't see about the Colorado-Wyoming curtailment here.

Q. This is a letter written by the Colorado-Wyoming Gas Company, is it not?

A. Yes.

Q. And is not the Public Service Company and the Cheyenne Light, Fuel & Gas Company, two companies, that were the local distribution companies of Colorado-Wyoming Gas?

A. Yes, it states here that there is possibility of industrial loads having to be shut off.

Q. Then read the next.

A. On January 18 the very thing took place. All industrial loads were ordered off on January 18.

Mr. Lange: What year?

The Witness: January 18, 1940.

By Mr. McCreery:

Q. So that in the light of those conditions your statement on Page 8 and 8-A would have to be altered considerably?

A. Not for 1939. That speaks for 1939 and prior to that.

Q. You undertake to state there were no curtailments or shutoffs of industrial service in 1939 to supply peak load demands?

A. There was no record of it taken and the company has so stated it.

Q. Although they didn't state it was done in 1940?

A. In 1940?

Q. No, in 1939.

A. Oh, no. It says the very thing took place on January 18, 1940, not 1939.

Q. Then look at this letter of December 11, 1939. Read that one to see whether it has happened.

A. It says: "Replying to your request of October 19, we present the attached table which shows the major irregularities in our operation. This includes those instances where the cause originated on the Colorado Interstate Gas Company's system.

"I also have in mind several occasions when the domestic peaks were so heavy that industrial plants were asked to reduce their takes during the period of the peak (from one to three hours) after which they were permitted to resume full load operations. No record of such instances has been kept and we are unable to furnish dates and amount of reduction on those occasions.

"We believe we have a very good record for industrial service, having had to shut off our industrial load for a total of only seven days since starting operations. Half of that time occurred between 5/31 and 6/4/37, when the In-

terstate's line was washed out in several places by the flood in Little Perico Creek in Texas."

Mr. Lange: Read the last paragraph and we will have the whole thing.

The Witness: "In the past the Colorado Interstate Gas Company has been able to furnish us sufficient pressure to maintain excellent winter service to our industrial plants but as to the loads on their lines have been built up, it has been increasingly difficult to maintain high pressure at Arapahoe. We find that winter storms now tax our system beyond its capacity and at such times industrial load must be reduced. We are told that we can expect no more than 125."

Mr. Lange: It is addressed to Mr. J. V. O'Connor, Federal Power Commission, Central Savings Bank Building, Denver, Colorado?

The Witness: Yes, sir.

Mr. Lange: It is signed by C. J. Shortess, Vice President and General Manager?

The Witness: Yes, sir.

Mr. Lange: And in order that the record may be complete, Mr. McCreery—

Mr. McCreery: Just a minute. I don't want this interruption. You can put that in later. I want to keep on this point here.

Q. When did you first see that letter?

A. I saw that letter at the time it was received.

Q. After you had seen that letter you wrote this Page 8 and 8-A?

A. Yes, sir, I stated there was no record. The company says: "No record of such instances has been kept," and I so state that no record has been kept.

Q. And you said also that there were no interruptions?

A. Yes.

Q. This letter says the opposite.

A. And I think I qualified the "no record of the interruption."

Q. So that is your conclusion?

A. Sure. It says "There was no recorded interruptions."

Q. I note you state on Page 6 that the Colorado Portland Cement Company—this is from your statement—"The Colorado Portland Cement Company is the main line industrial customer of the Colorado-Wyoming Gas Company farthest from the source of supply."

Was it your idea by that statement to imply that as compared with other industrials they paid too low a price?

A. I merely stated the bald fact that was true and they did—

Q. Isn't this also a very bald fact, that the consumption at the Colorado Portland Cement Company was about twice as great as the combined consumption of all of the industrial users put together?

A. It was considerably greater and that is shown in the report.

Q. That is a bald fact?

A. It is shown in the record and I am merely showing it as per Mcf., as I state. I couldn't state it was per Mcf. and then state it was per million feet of gas. I had to state Mcf.

Q. It was significant to state they were further and paid the lowest price but it wasn't significant to indicate the relative volumes?

A. That was shown in the exhibit itself.

Q. But it didn't justify any comment on your part as you have made here?

A. No, I didn't think about it.

Q. You didn't think about it?

A. No.

Q. What do you mean on Page 8 when you state: "The contractual priority of service rights of customers, of course, are dormant so long as there is available an adequate supply to meet the full requirements of all customers and adequate capacity in lines and equipment?

A. I meant just what I said, that the company doesn't exercise any priority, any contractual priority as long as adequate service is available to everybody. It is dormant during that period of time.

Q. By that you mean the right is still there to be exercised but it isn't necessary, of course, when they have an adequate supply to exercise it, and they wouldn't exercise it?

A. I wasn't speaking of the right but whether the actual exercise was taken at that time.

Q. I thought perhaps that was what you meant. Now turn to Page 6 of your statement, turning to the top of your page in your second column. What do you mean by "Last block of domestic rate and space heating rate cents Mcf."? What do you mean by that?

A. Well, you have the first block of the rate through there at one price and the last block is at another price. I placed them on a uniform pressure base rather than on a sales base.

Q. What do you mean by that last block?

A. Your break is in two blocks.

Q. I appreciate that.

A. And this refers to the second part of your rate. You have a two-part rate.

Q. Do they include all gas upon which the four cents is applicable, that is, the space heating gas, or do you know?

A. Yes, it is.

Q. It does?

A. It takes in that break afterwards.

Q. Is the average revenue based upon actual revenue received from purchasing company divided by the Mcf. converted to the 14.65 pound pressure base?

A. Could I have a copy of my exhibit?

Mr. Lange: Here is a copy of it.

By Mr. McCreery:

Q. I am referring to Page 8; Mr. Lester.

A. The information came from—yes, that refers to the average of the domestic and space heating.

Q. My question was: "Is this the average revenue as you headed it based upon average revenue you received from purchasing companies divided by the Mcf. converted to the 14.65 base"?

A. Yes.

Q. Your answer is yes?

A. Yes.

Q. I notice a quotation on Page 4 of your statement, being at about the middle of the page. It states: "To the full extent it may be able to do so." What is your source of that quotation?

Mr. Lange: On what page is that, Mr. McCreery?

Mr. McCreery: Page 4 of his statement, Mr. Lange.

The Witness: It comes from the contract.

By Mr. McCreery:

Q. Which contract?
A. I will have to look it up.
Q. Well, I guess that is not important.
A. I haven't all of my working sheets here.

Mr. McCreery: It isn't of sufficient importance so I will withdraw the question, Mr. Examiner.

The Trial Examiner: Very well.

Mr. Lange: He can furnish it at some time during the day when he has time to look it up.

Mr. McCreery: Just have it put into the record, Mr. Lange.

Mr. Lange: Very well.

By Mr. McCreery:

Q. What did you determine the load factor of this company to be for the year 1939?
A. I didn't so state what the load factor of the company was.
Q. It doesn't appear in this study?
A. It doesn't appear in this study, no.
Q. The load factor of the entire company was not material in your study?
A. It is not here in this study.
Q. In arriving at the load factor on these industrials you have gone on a yearly basis, 365 days a year?
A. I don't think there was any reference where it was on a yearly basis.
Q. In the case of customers whose meters were read weekly you simply averaged the weekly meter readings?
A. Yes, sir, I did.
Q. Did you ask to see the charts which would have shown that?
A. No, we requested that information. Having requested the information, the company furnished it to us and

we asked for it to be on the same period. I don't see any reason why two requests are better than one.

Q. This doesn't have anything to do with what we were talking about a while ago?

A. That is true.

Q. You said the books and the records of the company were made accessible to you, did you?

A. Yes, certainly. The billing of the company was made accessible.

Q. I asked you if you examined their meter charts.

A. No, I didn't.

Q. All right, you have examined meter charts, haven't you?

A. Yes, sir.

Q. So that you would know they have them?

A. Yes, they have them.

Q. You know what those charts would show, don't you?

A. Yes.

Q. And you know you could have gotten the actual peak demands from those charts as indicated by the lines on the charts, do you not?

A. In certain meters that is correct.

Q. You certainly weren't expecting the company to go back and study all of those charts through for you? If you had wanted to know what those charts contained you could have gone there yourself, couldn't you?

A. No, when I was requesting certain information they probably had the information and had it already drawn out along those lines and kept track of the load factor, what their load factor was.

Q. You didn't get these load factors from the company?

A. I certainly got it from the information furnished by the company.

Q. At least these are the load factors you built in your exhibit?

A. Those factors are only a ratio of dividing figures and the underlying facts upon which the ratio was based were furnished by the company.

Q. But the figures you finally concluded were the load factors of your own compilation?

A. I made the division.

Q. On whatever formula you followed?
A. Yes.

Mr. McCreery: I think that is all.

Redirect Examination.

By Mr. Lange:

Q. Referring to the letter received by the Federal Power Commission from the Colorado-Wyoming Gas Company, dated December 11, 1939, I will ask you to read the letter that was the basis of the letter received on December 11, 1939.

A. "Colorado Springs, Colorado, October 30, 1939. Mr. C. J. Shortess, Vice President and General Manager, Colorado-Wyoming Gas Company, 407 Continental Oil Building, Denver, Colorado.

"Dear Mr. Shortess: Will you please supply a statement of total interruptions of service at each delivery point, giving in each instance:

"1. Customer

"2. Point of Delivery

"3. Date

"4. Duration

"5. Cause

"Please supply also a statement of instances, other than the above, in which it has been necessary to reduce or suspend service to industrial customers, giving in each instance:

"1. Customer

"2. Whether reduction or suspension of service

"3. Date

"4. Duration

"5. Cause

"Receipt of this information at an early date will be appreciated.

"Very truly yours,

"J. V. O'Connor (Signed)."

Q. And in connection with the Colorado-Wyoming Gas Company's letter of December 11, 1939, particularly the statement where they say "We present the attached table," that attached table, Mr. Lester, is that the same as Table No. R-5 appearing in Exhibit No. 251, your exhibit?

A. Yes, it is.

Mr. Lange: I believe that is all, Mr. Examiner.

Mr. McCreery: That is all.

The Trial Examiner: You may step down, Mr. Lester.

(Vol. 86, pp. 12903-12926.)

Commission Exhibits 307 and 308 (Appendix this Record).

The Commission witness, WILLIAM H. LYON, in his cross-examination (Vol. 81, pp. 12,049-14,149) in connection with Exhibits 227 and 228, entitled, respectively, "Colorado-Wyoming Gas Company, Allocation of Cost of Service, Year 1929" and "Summary of Cost of Service, years 1937, 1938 and 1939," relating to all three respondent pipeline companies, testified:

"Q. Now, Mr. Lyon, do you know whether or not all of the industrial contracts entered into by Colorado-Wyoming Gas Company carry a shut-off provision so that if sufficient gas is not available to supply the demand made upon the company the industrial contracts are shut off in whole or in part so as to accord a supply to those having prior rights, the domestic consumers?

"A. I believe that clause as you state it is substantially in all of the contracts. I have not examined the contracts for the sale or distribution—

"Q. Do you know whether or not a similar provision is contained in the franchises under which gas sold by Colorado-Wyoming Gas Company is served various communities by Public Service Company of Colorado? Do you know that?

"A. I haven't examined the franchises.

"Q. So you do not know that?

"A. No.

* * * * *

"*The Witness:* As I understand the question, I will ask you this: Do you mean that the rights for gas service for the Colorado-Wyoming Gas Company on the facilities of the Colorado Interstate Gas Company are subordinate to the rights of the city of Denver?

Mr. McCreery: Yes.

* * * * *

"A. I know that the subordination of one contract or class of service is related to another and that the Colorado-Wyoming Gas Company's contract has some peculiarities, but I am not able to recall right now exactly the wording of that.

"Q. Do you understand or know whether or not the supply of gas to Colorado-Wyoming Gas Company is also subordinate to the supply of gas for the city of Pueblo?

"A. I believe I recall that provision, yes.

"Q. Did the fact that shut-off provision was in all of the industrial contracts, in the terms of these franchises, if any of the franchises have terms, and of these various contracts enter into your study or Exhibit No. 227?

"A. No, except in the statement that I made with reference to the shut-off clause.

"Q. There is no effect given to them in the determination of this exhibit?

"A. No.

"Q. Nor in any of the elements in your exhibit, is that true? It doesn't enter into your exhibit at all?

"A. The determinations in that exhibit, that is correct."

(Vol. 81, pp. 12,059-12,061.)

And again:

"Q. Mr. Lyon, did you give consideration or effect in your study to the fact that at the present time the entire capacity of the Colorado-Wyoming system is required to satisfy peak-day demands of domestic consumers?

"A. No effect."

(Vol. 81, p. 12,146.)

This witness had knowledge of numerous and repeated "shut-offs" and curtailments of deliveries to industrial cus-

tomers to meet peak-load requirements of domestic consumers (Vol. 81, pp. 12,061-12,069).

Similarly, the Commission witness, Claude R. Lester, in his Exhibit 251, entitled "Report on the Review and Analysis of the Contracts, Rates and Billings of Colorado-Wyoming Gas Company," refers to "Priority of Service" of domestic consumers over industrial customers contained in the Company's various sales contracts (Ex. 251, Statement, pp. 7-8; Vol. 86, pp. 12,889-12,892). He makes no reference, however, to the provisions and requirements for such priority and preference embodied in the gas purchase contract of Colorado-Wyoming Company with Colorado Interstate Company (Ex. 101, pp. 13-14).

The witness then concluded (Ex. 251, Statement, pp. 8-8 (a); Vol. 86, pp. 12,891, 12,892):

"The contractual priority of service rights of customers of course, are dormant so long as there is available an adequate supply of gas to meet the full requirements of all customers and adequate capacity in lines and equipment." • • •

"There have been no interruptions in the Colorado-Wyoming Company's domestic and industrial service at the same time, although domestic service on branch lines has at times been interrupted due to line failure. Industrial service has at times been totally interrupted or reduced so that domestic service could be maintained when washouts or other accidents have affected the pipeline of the Colorado Interstate Gas Company. No records have been kept of occasions when domestic peaks were of sufficient magnitude so that industrial takes were necessarily reduced during the peak load periods."

On cross-examination, the witness stated that he had knowledge, based on Company letters to the Commission in 1939, 1940 and 1941, of numerous instances of shut-off or curtailment of industrial service to satisfy domestic peak demands, because there was not enough gas available to supply both demands (Vol. 86, pp. 12,907-12,918.)

Counsel for Colorado-Wyoming Company objected and moved to strike the above quoted conclusion of the witness,

that "there have been no interruptions in the Colorado-Wyoming Gas Company's domestic and industrial service at the same time," etc. (Vol. 86, p. 12,892). In sustaining this motion the Examiner ruled:

"*The Trial Examiner:* There is so much testimony in regard to the shutoffs that as far as the Examiner is concerned, the Examiner would prefer to rely upon the record rather than the statement of Mr. Lester's; therefore, the examiner is going to entertain the motion of Mr. McCreery to strike that paragraph beginning at the bottom of page 8 of this written statement and concluding on page 8-A."

(7) *Peak-Day Purchases and Deliveries.*

The peak-day purchases and deliveries in M.c.f., of natural gas made by Colorado-Wyoming Gas Company in the years 1938, 1939 and 1940 at 12.9 lbs. and 14.65 lbs. per square inch absolute, respectively, were:

	Gas Purchased	At 12.9 lbs. Pressure	At 14.65 lbs. Pressure
12/26/38	Colorado Interstate Gas Co.	15,315	13,486
	Berthoud Field	170	150
		15,485	13,636
	Gas Delivered	15,485	13,637
	Gas Purchased		
2/9/39	Colorado Interstate Gas Co.	12,871	11,334
	Berthoud Field	196	173
		13,067	11,507
	Gas Delivered	13,122	11,556
	Note: Total Industrial	593	522
	Great Western Sugar Co. supply cut off 2:15 P. M. for balance of day.		

1/18/40	*Gas Purchased*		
	Colorado Interstate Gas Co....	11,646	10,255
	Berthoud	228	201
		11,874	10,456
	Gas Delivered	12,803	11,274
	Gas Purchased		
12/13/40	Colorado Interstate Gas Co.....	16,053	14,135
	Berthoud Field	151	133
		16,204	14,268
	Gas Delivered	15,929	14,026
	Note: Sales for Resale—Customers	11,468	10,098

(Ex. 242, Vol. 83, pp. 12,429, 12,431.)

The load factor of the Colorado-Wyoming system for the year 1939 was 58.5 per cent and for the year 1940 was 53.8 per cent (Vol. 84, p. 12,610. The load factor at Cheyenne, Wyoming, for 1939 was 44.67 per cent (Vol. 29, p. 3971).

Commission witness Lyon testified with respect to system deliveries of Colorado-Wyoming Gas Company, as follows:

	At 12.9 lbs. pressure	At 14.65 lbs. pressure
12/26/38	15,244 mcf.	13,075 mcf.
1/16/39		12,070 mcf.
2/ 9/39	12,672 mcf.	10,786 mcf.
5/17/39		12,512 mcf.

(Vol. 81, pp. 12,057-12,058, 12,098, 12,106-7, 12,144. Ex. 227, Table 2, Col. 9.)

Commission Exhibit No. 249 (Appendix this Record).

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(8) *Inter-corporate Relations.*

Exhibit No. 10 (Federal Trade Commission Report, Vol. 83, Senate Document 92, of date December 15, 1935 (Appendix this Record).

Commission Exhibits relating to corporate history, corporate "background" and intercorporate interests and relations.

Deposition of Christy Payne, October 22, 1940 (Appendix this Record).

Exhibit No. 1. Agreement of April 5, 1927 (Appendix this Record).

Transcript of Testimony, Vol. I (Spencer). Beginning with the 5th line from top of page 58, to and including the 6th line from top of page 63 (Appendix this Record).

Commission Exhibit No. 54. Excerpts from Federal Trade Commission Report No. 66, Senate Document 92, Part 66 (Appendix this Record).

Excerpts from Transcript of Testimony, Vols. 33 and 86 (Appendix this Record).

Commission Exhibit No. 138. Map (Appendix this Record).

Commission Exhibit No. 138A (Appendix this Record).

Commission Exhibit No. 141 (Appendix this Record).

Commission Exhibit No. 142 (Appendix this Record).

Commission Exhibit No. 143 (Appendix this Record).

Commission Exhibit No. 250 (Appendix this Record).

CONTRACTS AND AGREEMENTS FOR PURCHASE OF GAS.

Colorado Interstate Gas Company (Ex. 7f, 101).

Original, Amendments and Industrial Rate Supplements.

Dated: Original, October 3, 1929.
Supplement, October 8, 1929.
Miscellaneous Industrial Rate Supplements of various dates.

Company Exhibit 101 (Appendix this Record).

The Supplemental Rate Schedules:

These relate to various industrial and direct sales. Under date of February 18, 1941, of the price of 12¢ per M. c. f. charged Colorado Portland Cement Co., near Laporte, Colorado, by Colorado-Wyoming Company for gas, 9½¢ is to be paid Colorado Interstate Company as the purchase price during the year 1941, with the 'understanding that Colorado Interstate Gas Company does not undertake to furnish a full and uninterrupted supply of gas, but may at any time and without notice discontinue in whole or in part the furnishing of gas for the purpose of said contract" (Ex. 297); under date of May 10, 1939, Colorado Interstate Company is to furnish to Colorado-Wyoming Company surplus natural gas for resale "to Public Service Company of Colorado for industrial use in its Valmont electric power plant located near Boulder, Colorado," at 9½¢ per M. c. f. to Colorado Interstate Company "for a period of thirty (30) days and continuing thereafter subject to cancellation upon thirty (30) days' notice by either party"; under date of June 30, 1938, the price to be paid Colorado Interstate Company for gas sold to Colorado-Wyoming Company, and by it resold to Public Service Company of Colorado for distribution in the communities of Edgewater and Mount Air, was fixed at 35¢ per M. c. f. (Ex. 7f), and under date of July 28, 1933, the price to be paid Colorado Interstate Company for gas served by Public Service Company to the Jewish Consumptives' Relief Society was agreed to be 75% of the gross revenue as billed to that hospital (Ex. 7f). The remaining 25% is divided equally between Colorado-Wyoming Company and Public Service Company (Ex. 102 A).

The gas purchased under this contract amounts to more than 98% of the gas supply of Colorado-Wyoming Company (Ex. 51).

Goodstein Pipeline Company (Ex. 113).

Dated: November 25, 1939.

Natural Gas Supply:

Berthoud Structure, so-called, near Berthoud, Colorado.

Term: During the life of the Berthoud Structure.

Price: 10c per M. c. f. at contract pressure base of 14.65 pounds.

Delivery: At a point near Berthoud, Colorado, on the main line of Colorado-Wyoming Company's system.

Payment for gas: Not later than 15th of the month following the calendar month in which gas is sold and delivered.

General: The contract also contains usual provisions governing purity and heat standards, covering delivery and metering, and relating to general administration procedure.

The gas purchased under this contract amounts to less than 2% of the gas supply of Colorado-Wyoming Company (Ex. 51).

CONTRACTS FOR SALE OF GAS TO DISTRIBUTION COMPANIES FOR RESALE (EX. 102).

There are four such contracts:

Cheyenne Light, Fuel & Power Company.

Original contract, September 25, 1931.
Amendatory contract, August 24, 1934.
Amendatory letter, August 1, 1938.

Public Service Company of Colorado.

Original contract, October 3, 1929.
Amendatory contract, August 24, 1934.
Amendatory contract, September 24, 1937.

Greeley Gas & Fuel Company.

Original contract, July 29, 1930.
Amendatory contract, October 24, 1934.

Highway Gas Company.

Contract, June 20, 1933.

Sale and Purchase of Gas:

Under each of the foregoing contracts, Colorado-Wyoming Company agrees to sell and deliver all the natural gas

requisite for the supply of the domestic consumers in the territory then or thereafter connected to or served with gas from the distribution lines of the companies in question.

All of the contracts, except the Highway Gas Company contract, also provide for the sale and deliveries of "such amounts of natural gas as may be requisite to fulfill contracts made with the consent and approval of the Vendor by the Vendee for the sale of natural gas to consumers other than domestic consumers."

In addition, the contract with the Cheyenne Company and Public Service Company provides for the sale and delivery of "such amounts of natural gas as the Vendee may desire for use in its power plant or plants" under terms and conditions to be agreed upon.

Every contract is subject to the further provision "that the Vendor shall not be obligated to sell and deliver natural gas in excess of the amount it has currently available for delivery."

Delivery:

Delivery is to be made to each company at the "city gate" of each of the cities and towns served by the several companies, except that delivery to Highway Gas Company is to be made at a point on the main line of the Colorado-Wyoming system near the City of Loveland, Colorado.

Source of Supply:

The Amarillo Field, in the Panhandle of Texas, is the source of supply for each of the contracts in question except the Highway Gas Company, which is served by an exchange from the Berthoud Structure, so-called, near Berthoud, Colorado.

Measurement at Delivery Point:

The gas is to be measured at the delivery point, in the case of each of said contracts, at a temperature assumed to be 60 deg. F., at a base pressure of 8 ounces gauge pressure above the average absolute atmospheric pressure at point of delivery.

Payments:

Gas purchased is to be paid for on the 10th of the month

following the calendar month in which delivery is made, except in the case of Highway Gas Company, under which contract the date of payment is the 15th of the month following the calendar month of delivery.

Priorities:

All of the foregoing contracts, except the Highway Gas Company contract, contain provisions for priority in the usual form:

> "It is agreed that in case of shortage, either temporary or permanent, of natural gas and necessity for curtailment of service to any classes of consumers, the demands of domestic consumers of the Vendor, the Vendee and/or of other distributing customers to which the Vendor or Vendee may sell natural gas, are to be preferred over service to industrial consumers; provided, however, that such domestic consumers' preference shall not be exercised so as to deprive the Colorado Fuel & Iron Company of the volume of natural gas needed to complete open-hearth heats then in jeopardy and to keep its furnaces warm during extreme domestic demand upon the Vendor's pipe line, or so as to deprive any other industrial or commercial consumer which requires a small proportion of its normal demand to prevent damage to its appliances."

And in addition, each of such contracts is "subject to the terms, conditions and restrictions" under which Colorado-Wyoming Company obtains its supply from Colorado Interstate Company, that is, specifically subject to the prior rights of Public Service Company at the Denver city gate and The Pueblo Gas & Fuel Company at the Pueblo city gate. In view of the fact that the supply of gas served to Highway Gas Company is derived from the Berthoud Structure, so-called, the usual priority provisions contained in the other contracts are not embodied in this contract.

Duration of Contracts:

The Cheyenne Company contract expires September 28, 1950; Public Service Company contract expires December 31, 1951; Greeley Gas & Fuel Company contract expires April 1, 1949; and Highway Gas Company contract expires December 31, 1951.

General Provisions:

Each of the contracts contains provisions governing purity and heat standards, covering delivery and metering, and with respect to interruption resulting from *Force Majeure*, as therein defined.

The "city gate" price for gas for ordinary domestic and commercial consumption, 40c per M.; for gas sold for domestic and commercial space heating 36c per M.; for gas resold under commercial and industrial contracts, 85% of the price charged by the distribution company is payable to Colorado-Wyoming Gas Company.

CONTRACTS FOR DIRECT SALE OF NATURAL GAS. (EX. 103, 103 A).

Existing direct sale contracts for industrial use are the following:

Customer	Date	Termination
Golden Fire Brick Company	No Written Contract	Year to Year
Adolph Coors Company	Sept. 11, 1939	3 years
Kuner-Empson Company	Oct. 26, 1940	1 year
Denver Pressed Brick Company	Jan. 10, 1940	Year ending 1940
Great Western Sugar Company	Oct. 26, 1940	1 year
Producers Canning Company	Nov. 26, 1938	3 years
Fort Collins Producing Corporation	Nov. 1, 1940	1 year
Colorado Portland Cement Company	Feb. 15, 1941	Dec. 1, 1941 (Ex. 297)
Valmont Generating Plant (Standby Service)	Jan. 1, 1936	Oct. 3, 1949
Valmont Generating Plant (Commodity Contract)	Dec. 31, 1935	Oct. 3, 1949

Character of Service:

Golden Fire Brick Company.

Fuel requirements of Buyer's kilns at Golden, Colorado, plant.

Consumption 1939, 66,291 M. c. f. (Ex. 105).

Adolph Coors Company.

Fuel requirements at Buyer's malt dryers, pitch burner, and other incidental uses at Coors Brewery, Golden, Colorado.

Consumption 1939, 18,677 M. c. f. (Ex. 105).

Kuner-Empson Company.

Fuel requirements of Buyer's steam boilers and other industrial uses at canning plant, Brighton, Colorado.

Consumption 1939, 38,570 M. c. f. (Ex. 105).

Denver Pressed Brick Company.

Natural gas required to supply brick kilns and incidental uses at Buyer's brick-making plant near Loveland, Colorado.

Consumption 1939, 52,597 M. c. f. (Ex. 105).

Great Western Sugar Company.

Fuel requirements of sugar mill of Buyer at Johnstown, Colorado.

Consumption 1939, 356,606 M. c. f. (Ex. 105).

Producers Canning Company.

Fuel requirements of canning plant of Buyer near Fort Collins, Colorado.

Consumption 1939, 333 M. c. f. (Ex. 105).

Fort Collins Producing Corporation.

General oil field uses of Buyer in Wellington Oil Field, Larimer County, Colorado.

Consumption 1939, 4575 M. c. f. (Ex. 105).

Colorado Portland Cement Company.

Gas for purposes incidental to the manufacture of cement, including kilns and dryers, to the exclusion of all other fuels.

Consumption 1939, 1,015,502 M. c. f. (Ex. 105).

Valmont Generating Plant.

Standby service for Valmont Electric Generating Plant of Buyer.

Valmont Generating Plant.

Fuel requirements of boilers and miscellaneous equipment in Valmont electric generating plant of Buyer.

Consumption 1939, 31,056 M. c. f. (Ex. 105).

Priority:

All such contracts are subject to priority rights of domestic customers, it being also expressly provided that "the Seller does not by this contract undertake to furnish the said Buyer a full and uninterrupted supply of gas for the period named" in the contract, and may discontinue or reduce deliveries for "any reasonable cause whatever."

Delivery:

Colorado-Wyoming Company makes delivery at or near the plants of such industrial customers.

Measurement:

The gas sold is calculated on a pressure base of either four or eight ounces per square inch above atmospheric pressure at an assumed temperature of 60 degrees F., as specified.

Price:

Golden Fire Brick Company.

Rate:	First 10 M. c. f. or less per mos.	$10.00
	Next 90 M. c. f. per M. c. f.	.40
	Next 400 M. c. f. per M. c. f.	.20
	Next 500 M. c. f. per M. c. f.	.18
	All over 1000 M. c. f. per M. c. f.	.15
Term:	No contract in force.	

Adolph Coors Company.

Rate:	First 10 M. c. f. or less per mos.	$10.00
	Next 90 M. c. f. per M. c. f.	.40
	Next 400 M. c. f. per M. c. f.	.20
	Next 500 M. c. f. per M. c. f.	.18
	All over 1000 M. c. f. per M. c. f.	.15

Kunzr-Empson Company.

Rate: (Nov. to June, Incl.)

First 10 M. c. f. or less per mos.	$ 8.30
Next 90 M. c. f. per M. c. f.	.50
Next 900 M. c. f. per M. c. f.	.25
Next 1000 M. c. f. per M. c. f.	.22
Next 3000 M. c. f. per M. c. f.	.20
All over 5000 M. c. f. per M. c. f.	.19

(July to October, Incl.)

First 10 M. c. f. or less per mos.	$ 8.30
Next 90 M. c. f. per M. c. f.	.42
Next 400 M. c. f. per M. c. f.	.20
All over 500 M. c. f. per M. c. f.	.18

Denver Pressed Brick Company.

Rate:

First 1000 M. c. f. or less per mos.	$200.00
All over 1000 M. c. f. per M. c. f.	.18

Great Western Sugar Company.

Rate:

First 1000 M. c. f. or less per mos.	$240.00
Next 4000 M. c. f. per mos.	.24 per M. c. f.
Next 5000 M. c. f. per mos.	.20 per M. c. f.
All over 10000 M. c. f. per mos.	.18 per M. c. f.

Producers Canning Company.

Rate:

Customer Charge: Per Month	$ 2.50
First 10 M. c. f. per M. c. f.	.60
Next 90 M. c. f. per M. c. f.	.50
All over 100 M. c. f. per M. c. f.	.25

Fort Collins Producing Corporation.

Rate: 17½c per M. c. f. for all gas.

Colorado Portland Cement Company.

Rate: 12c per M. c. f. for all gas.

Valmont Plant (Public Service Co. of Colo.)

Rate: Readiness to serve, $8000 per year.
For all gas delivered, 1½c per M. c. f. plus purchase cost of gas.

Payment:

In all contracts payment for gas and service is to be made on the 10th day of the month next following rendition of service, except as to Fort Collins Producing Company, in which case payment is to be made by the 20th of the month.

General Terms:

Usual administrative provisions and some special provisions not considered material in this presentation.

"Natural gas has always been sold and is sold to every industrial user, whether on direct sale or under resale contract, at a price in excess of the purchase price paid for such gas." (Vol. 84, p. 12,569).

CONTRACTS WITH PUBLIC AUTHORITIES.

Such contracts presently in force are:

War Department (U. S.), Fort Warren, Wyoming (Ex. 104).

Dated: June 26, 1940.

Duration: To June 30, 1941, with renewal option from year to year, not extending beyond June 30, 1951.

Price: 40c per M. c. f. "not subject to revision or control by the public service organization, commission, board or regulatory body having jurisdiction over rates for services of like character."

Delivery: At Government Reservation.

Character of Service: Continuous domestic.

General: Purity and heat standards; metering and measuring; payment; and administrative provisions.

War Department (U. S.) Fort Logan, Colorado (Ex. 104).

Dated: May 26, 1930; Amendment, August 15, 1934; Current Renewal, May 16, 1940.

Duration: To June 30, 1931, with renewal options from year to year not extending beyond June 30, 1951.

Price: 40c per M. c. f. "not subject to revision or control by the public service organization, commission, board, or regulating body having jurisdiction over rates for services of character herein set forth."

Delivery: Fort Logan, Colorado.

Character of Service: Continuous domestic.

General: Purity and heat standards; metering and measuring; payment; and administrative provisions.

Department of Justice (U. S.) Prison Farm, near Fort Logan, Colorado (Ex. 104).

Dated: August 8, 1939.

Duration: "Continue in force until further notice," subject to termination on 60 days' written notice by either party.

Price: 40c per M. c. f.

Delivery: Main line meter of Company near Fort Logan, Colorado.

Character of Service: Continuous domestic, except causes beyond control of Company.

General: Metering and measuring; payment; and administrative provisions.

Federal Security Agency, C. C. C. Motor Repair Division (U. S.) (Ex. 287).

Dated: March 8, 1941.

Duration: "Continue in force until further notice," subject to termination on 60 days' written notice by either party.

Price: 40c per M. c. f.

Delivery: Outlet company meter (International Metals branch line, near Littleton, Colorado).

Character of Service: Continuous except causes beyond control of Company.

General: Metering and measuring; payment; and administrative provisions.

Board of Water Commissioners, City and County of Denver, Colorado (Ex. 104).

Dated: August 1, 1939.

Duration: Three years from August 25, 1939.

Price:

First 10 M. c. f. or less per month	$10.00
Next 90 M. c. f. per month	.40 per M. c. f.
Next 400 M. c. f. per month	.20 per M. c. f.
Next 500 M. c. f. per month	.18 per M. c. f.
All over 1000 M. c. f. per month	.16 per M. c. f.

Delivery: Buyer's plant, Jefferson County, Colorado.

Character of Service: Fuel requirements of Buyer's boiler and other industrial uses at said plant, subject to shut-off or curtailment for domestic users. Company does not "undertake to furnish the said Buyer a full and uninterrupted supply of gas."

General: Purity and heat standards; metering and measuring; payment; and administrative provisions.

Note: Summary of Pressure Bases Under Foregoing Purchase and Sales Contracts (At Assumed Temperature of Sixty Degrees Fahrenheit).

Sales

Distribution Companies	Atmospheric Pressure	Pounds
Greeley Gas and Fuel	12.14 + 8 oz. =	12.64
Highway Gas Co.	12.27 + 8 oz. =	12.77
Cheyenne Light, Fuel and Power	11.80 + 8 oz. =	12.30
Public Service Company		
Denver Fringe	12.14 + 8 oz. =	12.64
(Edgewater and Mt. Air)	12.40 + 8 oz. =	12.90
Golden	12.00 + 8 oz. =	12.50
Boulder	12.11 + 8 oz. =	12.61
Brighton, Fort Lupton, Longmont, Loveland	12.27 + 8 oz. =	12.77
Berthoud	12.14 + 8 oz. =	12.64
Johnstown	12.34 + 8 oz. =	12.84
Ft. Collins	12.22 + 8 oz. =	12.72

Direct Industrials	
Colorado Portland Cement Company	12.22 + 8 oz. = 12.72
Adolph Coors Company	12.00 + 4 oz. = 12.25
Denver Pressed Brick	12.25 + 4 oz. = 12.50
Denver Ordnance Plant	12.00 + 8 oz. = 12.50
Fort Collins Producing Corp.	12.22 + 4 oz. = 12.47
Golden Fire Brick	12.00 + 8 oz. = 12.50
Great Western Sugar Co.	12.34 + 8 oz. = 12.84
Kuner-Empson	12.27 + 8 oz. = 12.77
Producers Canning Co.	12.22 + 4 oz. = 12.47
Valmont Plant	12.10 + 8 oz. = 12.60
Public Authorities	
Fort Logan	12.14 + 8 oz. = 12.64
Fort Warren	11.80 + 8 oz. = 12.30
Federal Prison	12.07 + 4 oz. = 12.32
Water Board (Denver)	12.14 + 4 oz. = 12.39
C. C. C. Garage	12.14 + 4 oz. = 12.39
Purchases	
Colorado Interstate Company	12.4 + 8 oz. = 12.90
Kirwell Oil Co. (Berthoud Field, Colo.)	14.4 + 4 oz. = 14.65
Fort Collins Producing Corp.	12.22 + 4 oz. = 12.47

(Ex. 101, 102, 103, 103A, 104, 113, 287.)

MISCELLANEOUS CONTRACTS.

Management Contract—Henry L. Doherty & Co. (Ex. 106.)

Dated:

August 1, 1929. Accepted by Colorado-Wyoming Company August 29, 1929.

The agreement provides:

"The undersigned, as Fiscal Agent, hereby offers to continue to place at the service of your corporation, under the same terms and conditions as have been in effect for the past several years, a complete organization which has been built up in connection with the operation and development of public utility, oil and natural gas properties, making available to you the combined experience,

advice and assistance of this organization to aid you in solving such problems as may arise in connection with the conduct of your business. Among others, it is proposed to perform for your corporation, subject to the direction and control of your Board of Directors, the following service:"

These services are described as personnel, executive, general accounting, statistical, purchasing, designing and construction engineering, financial, securities department, valuation, tax department, new business department and technical and research department.

"For the above services your corporation will pay as follows:

"1. A management fee equal to one and three-quarters per cent (1¾%) of its gross revenue, after deducting Inter-Company sales for resale.

"2. An engineering fee equal to five per cent (5%) of the cost of construction."

Duration:

One year and thereafter from year to year unless terminated by either party upon ninety days' written notice (Ex. 106).

Supervisory Services Rendered.

Extensive design, construction and advisory services were made available and actually rendered to Colorado-Wyoming Company from the inception of that enterprise through the year 1937, under the terms of the foregoing contract.

Upon this point the witness HANCOCK testified as follows:

"Q. Had you had occasion to do any work for Colorado-Wyoming Gas Company prior to that time (1939)?

"A. Yes.

"Q. What was the character of that work?

"A. General engineering work involving recommendations and suggestions as to construction and building of property and conducting and operating and maintaining the property.

"Q. Did you have anything to do with any part of the construction or maintenance of this property?

"A. Yes, I was engaged in a consulting capacity in regard to the building and operation and maintenance of the property.

"Q. Of the original part of the line, the first part of the line that was built or the second?

"A. Both."

(Vol. 24, pp. 5407-5408.)

And similarly the witness F. C. HAMILTON testified with respect to services rendered by him to the Colorado-Wyoming Company, under said management contract as follows:

"From December 1, 1925 to September 30, 1935, I was a member of the Executive Committee of Henry L. Doherty & Company."

(Vol. 84, p. 12,449.)

"Q. Now, Mr. Hamilton, are you and have you been throughout the history of this company, Colorado-Wyoming Gas Company, familiar with its operations, its systems, the method under which it has been run, and the returns of the company in general, the returns that the company has enjoyed in the conduct of its business?

"A. I have, yes, sir, for the simple reason that the executive committee of Henry L. Doherty & Company had to concur in and advise with the management of all construction requisitions that exceeded $500 and had presented to them each year the estimated operating budget for the ensuing year for concurrence. Monthly those estimates were checked against the actual results and were revised or the differences explained, which gave us a background to check two things. One was to check the operating ability or the estimating accuracy of the men on the property and another one was to give my people a chance to check their estimates of construction costs which were made in advance against what actually took place.

"Q. So that you were very closely familiar with the entire construction of this company's system, both the original system between Fort Collins and Cheyenne as served by the Wellington field and the enlarged system created by the building of the line from Fort Collins to Littleton and the purchase of gas from the Colorado Interstate Gas Company at point for service of the entire system?

"A. That is true.

"Q. Have you been familiar during all of the years of the life of this company with the actual operation of this company by those in charge of its operation?

"A. From the financial results of that operation, not the detailed operation."

(Vol. 84, pp. 12,455-12,456.)

The Commission's witness VAUGHT, who made an extensive study of the Company's plant account (Ex. 199), stated on cross-examination that in connection with the plant account of Colorado-Wyoming Company, after the elimination of the 5 per cent engineering, there are no charges of any kind covering designing and construction engineering in any amount, so far as he knew (Vol. 66, pp. 9541-9543). He also testified that so far as he knew the Company did not have at any time any purchasing department for the purchase of pipe and large supplies (Vol. 66, p. 9543).

The qualifications of the witness Hancock as a consulting, designing and construction engineer and of the witness Hamilton, as a construction and valuation engineer, are, as testified by them, hereinafter set forth.

* * * * *

Service Contract—Petroleum Advisers, Inc. (Ex. 106).

Dated:

January 1, 1938. Accepted by Colorado-Wyoming Company July 19, 1938.

The agreement provides:

"The undersigned, *Petroleum Advisers, Inc.* (hereinafter called the 'Advisers') has a staff and organization of executives, accountants, financial and technical advisers of wide experience in the petroleum industry operating in interstate commerce, which organization has been built up over a long period of years for the purpose of making available to companies engaged in the various branches of the petroleum industry the combined experience, advice and assistance of such staff in connection with the problems arising in the conduct of your business and of rendering services of the nature hereinafter outlined.

"Advisers proposes to supply services for operating companies (hereinafter styled 'Operating Companies') including your corporation, subject to the direction and control of your Board of Directors, of the following nature:"

These services are described as executive, auditing and accounting, statistical, purchasing, construction supervision, financial, budget, valuation, rate, tax, sales and promotion advice, insurance, technical and research, secretarial, personnel, advertising and transfers and special services.

The agreement continues:

"*Compensation.*

"*Advisers will render the foregoing services to corporations signing this and similar contracts at cost to it of rendering the same.* Direct charges shall be made so far as costs can be identified and related to the particular transactions involved without excessive effort and expense. There shall also be paid to Advisers the out-of-pocket expenses incurred by the personnel of our staff while at the properties of your corporation or traveling to or from them, or while engaged upon work for your corporation on special matters.

"It is proposed to enter into contracts similar to this with other Operating Companies engaged in a business similar to that of your corporation which are subsidiaries of Cities Service Company. Advisers agree that during the term of this contract it will render no service to any company for compensation which shall be less than the cost of rendering such service.

Billings and Payment.

"As soon as practicable after the close of each month (herein termed the 'current month'), Advisers will determine its total expenses for the current month, including all overhead. Advisers will also compute the direct charges, if any, to be made for the current month. . . . Advisers will thereupon deduct from the amount of its total expenses for the current month, the amount of all direct charges to be made for the current month, whether or not to companies which are parties to this or similar con-

tracts. Having thus determined the balance of expense for the current month (i. e. total expenses for the current month less direct charges for the current month) Advisers will then pro rate such balance of expense among the companies having this or similar contracts, based upon the ratio when, for the month preceding the current month, the gross operating revenues of each of such companies bears to the aggregate gross operating revenues of all such companies. In determining gross operating revenues, there shall be deducted all payments made for purchases for resale purposes from any other company having an agreement with Advisers similar hereto. Advisers will thereupon bill your corporation for:

"(a) the amount of any direct charge to be made to your corporation, and (b) your corporation's pro rata share of said balance of expense.

"The amount set forth in such bill shall be payable by your corporation to Advisers forthwith upon receipt of said bill by your corporation.

"Determination and allocation of cost will be made pursuant to Rule 13-32 or any other applicable rule, regulation or order of the Securities and Exchange commission, or in the absence thereof in accordance with sound accounting methods of determining cost.

"In the case of services for which a direct charge is made, the cost will consist of salaries of officers and employees of Advisers for time actually spent on service, plus out-of-pocket expenses, plus a fair and equitable proportion of Advisers' overhead.

"'Out-of-pocket' expenses shall include telegraph tolls, long distance telephone charges, postage, express, travelling and hotel expense, printing, mimeographing and photostating expense extra compensation paid for overtime and meals, and other similar charges.

"'Overhead' shall include the salaries of bookkeepers, secretaries, stenographers, file clerks, messengers and similar employees, rent, light, telephone, insurance, taxes, interest, general supplies, depreciation and other such miscellaneous expenses.

"Any charges based on estimated cost will, at least annually, be readjusted to cost as determined in accordance with sound accounting methods of determining cost."

Term of Contract:

"Services will be performed and paid for as herein set forth commencing January 1, 1938 until the termination of this contract as hereinafter provided. This agreement may be terminated by either party after giving sixty days' written notice of its intention so to do to the other.

"This agreement will be subject to termination or modification at any time to the extent that performance may conflict with any rule, regulation or order of the Securities and Exchange Commission, adopted before or after the making of this agreement which may be applicable to either of the parties hereto.

"This agreement shall be subject to the approval of any State Commission or other State regulatory body whose approval is, by the laws of said State a legal prerequisite to the execution and delivery or the performance of this agreement."

Company Exhibit No. 111 (Appendix this Record).

PLANT, PROPERTY AND BUSINESS OF COLORADO-WYOMING GAS COMPANY AND THE VALUE THEREOF.

(1) ALL PROPERTY.

(a) *Physical Plant and Overheads* (Ex. 111).

J. L. WILLARD, rate and valuation engineer (whose qualifications and experience are set forth herein under the subject "Depreciation"), a witness for Colorado-Wyoming Company, testified on "the value of the plant" of that Company.

He identified Exhibit 111, entitled "Determination of Property Value" (see Appendix) and in statement attached to said exhibit testified:

"This exhibit sets forth the value of the plant of the Colorado-Wyoming Gas Company, as of September 30, 1940 to which is added the amount necessary to complete

current 1940 construction of the Arapahoe Compressor Station and the additional amount required to complete that station in 1941 to its ultimate capacity of 1200 H. P. Necessary Working Capital also is included. These several items are shown on statement No. 1, respectively as $1,747,865, $9,688, $35,000 and $45,490, which amounts to a total of $1,838,043.

"A further detail of the property included in Statement No. 1 is listed in Statements No. 2, No. 3 and No. 4. Statement No. 2 is a summary by accounts of the property of the company and shows in total for each account the construction costs of the property together with the amounts remaining after deduction has been made for existing depreciation. The total of the Plant and Investment as of September 30, 1940 is $1,894,421.54 and after making deductions for existing depreciation results in a total of. $1,747,864.89.

"Statement No. 3 shows the kind and type of property included in each account and the depreciation applicable thereto. Account 1000 details all the parcels of land owned by the company and the cost of each tract. The remaining accounts are similarly shown; some in general summary form and others of major importance in detail.

"Account 1013 includes all the costs of material and labor necessary in the installation of all main and branch lines. The system consists of a main 10¾" O D line extending about 30 miles from Arapahoe Measuring Station near Littleton at which point gas is purchased from the Colorado Interstate Gas Company, to a point about 7½ miles east of Boulder, Colorado. From this junction to Fort Collins, a distance of about 43 miles, 8⅝" O D pipe is used. Approximately 41 miles of 6⅝" O D main extends from Fort Collins to Cheyenne, Wyoming. The Branch lines in general consist of the Boulder Branch of 6" and 8" pipe, 7½ miles long; the Brighton Branch consisting of 2" and 3" pipe, 21 miles; the Colorado Portland Cement Branch, a 6" line, 3¾ miles; the Greeley Branch, 22½ miles of 6" pipe; the Johnstown Branch, a 6" line, 3½ miles; the Valmont Branch, an 8" line slightly over a mile in length; the Golden Branch, a 4" line.

8¾ miles and the Fort Lupton Branch, a 2" line, 2¼ miles in length. In addition to the lines above mentioned, numerous other small lines extend from the main or branch lines. The amount in this account comprises approximately 80% of the cost of the entire system. Details for each main line and the major branch lines indicate the footage of each kind and size of pipe. The cost of the major lines and applicable depreciation is listed individually.

"Account 1014 includes the total charges for material and labor in connection with compressor stations. The aggregate of this account amounts to about 12% of the entire system. At present there are two active compressor stations and one which is nearing completion of construction. One station is located at Arvada and consists of 6 twin gas engine compressors of 470 H. P. each together with the necessary auxiliaries. A second station is located near the town of Wellington, Colorado. This station has 4 single gas engine compressors of 85 H. P. each. The station under construction is located near Littleton, Colorado and is known as the Arapahoe Station. This station includes one angle type vertical compressor of 600 H. P.

"Since the Arapahoe Station was under construction as of the date of this study, only the cost of the work completed as of that date is included in Statement 3.

"For the Arvada and Wellington Stations, certain detail of the buildings and equipment at each station are shown, together with the construction cost and existing depreciation applicable to each.

* * * * *

"Depreciation as applied in Statement No. 3 is on a basis of the existing observed depreciation. Most of the factors necessary to calculate the amount of depreciation were obtained from H. D. Hancock, Natural Gas Engineer, and President of Gas Advisers, Inc. of New York, who has made an exhaustive study of the system for that purpose. Depreciation as applied to certain of the accounts such as automobiles, office equipment, telephone lines, etc., was the result of my own calculation.

In conjunction with Mr. Hancock, I have weighted certain of his studies for application. Other conclusions have been applied directly to the physical property values, resulting in the computed amount of existing depreciation as tabulated in the column headed "Depreciation Deducted" on Statement 3.

"Statement No. 4 reflects the build-up of the plant account by years from 1925 to September 30, 1940. The tabulation shows the total net amount of plant and investment by year ending figures, together with the final as of September 30, 1940, which latter amount was used as the starting point of the exhibit. It will be noticed that the Colorado-Wyoming Gas Company had two major construction periods, the first from 1925 through 1927, and the second from 1929 through 1931.

"The totals of each account in Statement No. 3 for plant and investment and less depreciation have been carried forward to Statement No. 2. The total of the depreciated costs of all accounts in Statement No. 2 has been brought forward to Statement No. 1 and appears as the first item on that statement. Also, on the first statement, are amounts of expenditure necessary for the completion of Arapahoe Compressor Station. From payments already made and considering invoices now on hand together with an estimate of expenses yet to be incurred in 1941, I have calculated an amount of $9,688 for the completion of the first phase of this construction. The addition of a second compressor with the necessary auxiliaries has been added as a 1941 expenditure of $35,000.

* * * * *

"The total of the statements amounts to $1,838,043 which represents the depreciated value of the present existing property together with additions current in the immediate future and working capital."

(Vol. 25, pp. 3533-3542.)

On cross-examination the witness testified: In commencing his work in connection with Exhibit 111, he first made inventory of all the property of the Company, and upon completion of the field notes of the inventory a complete

compilation of invoices having to do with construction was undertaken. The purpose of this was to obtain every expenditure the Company had made in connection with construction, to allocate each of such expenditures to various jobs that they had been charged to, and eventually to charge them to the various items under which they belong. The witness did a large portion of this work himself, although part thereof was prepared under his direction by Mr. F. M. Cropper, who has been associated with the Cities Service interests since 1913, and who has made valuations in probably every state of the United States; by Mr. E. M. Harms, also a valuation engineer who has been connected with Mr. F. C. Hamilton's organization since 1927; and by Mr. Sigrud Jorgensen, who is a member of the accounting division of Electric Advisers, Inc.

The witness has made many valuations and cost studies. In connection with all valuation work there is necessarily involved the problem of the capital amount of the Company. It is necessary to investigate the charges to all construction job orders, the posting of those charges to the various capital accounts, examine the actual purchase vouchers, and see posting of those vouchers to a job order; and in this manner carry the whole study through to a final charge to a particular capital account, in order to verify that the property covered in the physical inventory is actually recorded on the books of the Company, and thus finally to obtain the actual and the original cost of those items.

(Vol. 25, pp. 3542-3551.)

The written statement preceding the exhibit was prepared by the witness himself. (Vol. 25, pp. 3551, 3552.)

"Q. Does Statement 1, 'Plant and Investment,' September 30, 1940 as $1,747,865 appear as per books of the company?

"A. As per books of the company less observed depreciation.

"Q. Less observed depreciation?

"A. That is right.

"Q. You don't have that listed and so set forth on Statement 1.

"A. Not in that particular wording, no.

"Q. Just preceding that I want to ask you this: What do you mean by the wording 'Present value' that you have at the head of Statement 1?

"A. That means my interpretation of the present value of the physical property of the Colorado-Wyoming Gas Company, adding to the cost of actually existing property those costs which are immediately pending in construction of a compressor station, and also adding to it the cost of working capital, all of which costs should be considered in determining a rate base.

"Q. And less the observed depreciation that you got from Mr. Hancock's exhibit?

"A. That isn't reflected on Statement 1, but the results of his observed depreciation is indicated by the difference in the two figures on Statement 2, and the actual details compiled from his calculations are indicated in Statement 3."

(Vol. 25, pp. 3552, 3553.)

"Q. Now, then, going back to Statement 1 again, I notice that under Arapahoe Station you have an item of Additional Compressor for the year 1941. Do I understand it correctly that you are including that under your designation and definition of present value of property of the Colorado-Wyoming Gas Company?

"A. As far as the purposes of this case is concerned, I am, yes, sir.

"Q. In what respect?

"In considering the necessary elements to find a rate base you not only consider the value of the actual existing property of the particular moment but have to also look into or give consideration to expenditures that are definitely current and that is what these expenditures are.

"Q. Well, is that the same reason that you include under your definition of 'Present Value' these commitments for 1940 that you have on Statement 1?

"A. That is right.

"Q. And also the 'Working Capital' on Statement 1?

"A. That is right.

"Q. Although 'Working Capital' the way you have analyzed it, is presently being used or is presently necessary

in the operation of the company as it is now existing?

"A. That is right. That is based on expenses current in the operation of the company.

"Q. And it is your impression that the way you define 'present value' and set it up here that this item of additional compressor stations for 1941 is necessary and is to be included in this Statement 1 where you put it?

"A. I felt that since the additional expenditures in the future were so few in number and minor in total amount, that it wouldn't be advisable or necessary to make a separate exhibit in order to reflect them as a part of this case, so I entered them as part of Statement 1.

"Q. You might have put any other possible requirements under Statement 1, too. Would you have determined the present value also if in your opinion it was necessary to be included in the preparation of a rate case?

"A. The term 'present value' is just a name. That could also be plant investment less depreciation plus working capital and commitments. It really doesn't mean that this is a value that represents a fair sale price, one party to another; it is just a name attached to this total which represents the physical property of the company less depreciation plus current expenditures and working capital."

(Vol. 25, pp. 3554-3555.)

"Q. Well, if you were to set up an original cost statement, under Statement 1, instead of the language 'Present Value,' how would you set it up?

"A I would label it 'Original Cost.'

"Q. And what items would you have appear on Statement 1?

"A. Well, it would be the total as calculated for original cost without any consideration for depreciation.

"Q. You would still have this additional compressor for the year 1941 included?

"A. If I were presenting that figure as an exhibit in connection with a rate case, I would include the additions either as a part of that figure or would show them separately in another exhibit as items that I feel are necessary to consider in a case of this kind.

(Vol. 25, p. 3559.)

"Q. And what authority, or, rather, what officials of the company apprised you of the necessity of this additional unit for the year 1941?

"A. The operators and—

"Q. Who do you mean by the operators?

"A. Mr. Thackrey and Mr. Davis and Mr. Shortess all advised me that this unit is going to be installed in 1941, and I have also been in conference with those three, together with Mr. Hancock.

"Q. Did they also give you a breakdown of the total, which you have here of $35,000?

"A. In a general way, yes, sir.

"Q. Well, you wouldn't just put that lump sum in there unless you had a pretty complete breakdown of it, would you?

"A. Well, the breakdown is practically all in the cost of the compressor, and the expense of incidentals in connection with a compressor installation, the cost of the foundation, the cost of the installation and auxiliaries, it has been determined that the total expenditure will be $35,000.

"Q. Installed?

"A. That is right."

(Vol. 25, p. 3561.)

"Q. Now, then, this depreciation that you have set up on Statement 2 and applied to the plant and investment there, is the dollar figure computed from the per cent condition that Mr. Hancock set up in Exhibit 107?

"A. Yes, sir.

"Q. To go with what else?

"A. To go with some of my own calculations."

(Vol. 26, p. 3566.)

The calculations as to per cent condition above referred to as having been made by the witness were: Arapahoe Compressor Station, office furniture and equipment, including calculating machines and typewriters, automobiles and trucks, miscellaneous tools, and telephone lines. (Vol. 26, pp. 3566-3586.) (Note: The study of per cent condition of these items of property is abstracted elsewhere herein under the subject of "Depreciation".)

In Exhibit 111, no consideration was given to anything set up on the books of the Company for depreciation. The exhibit is based strictly on observed depreciation. (Vol. 26, pp. 3620-3624.)

The breakdown of Account 1021, General Construction Expenditures $91,619.13, in Statement No. 4 of Exhibit 111, was:

Item 1. (1925-1926)

Miscellaneous Construction Expenditures	$ 6,541.87

Item 2. (1929-1930)

General Overhead Expenses	5,714.74

Item 3. (1930-1931-1932)

Interest	79,362.52
Total	$91,619.13

(Exhibit 112.)

Item 1 thereof consists of "General expenditures during construction that were not distributable to various accounts at the time they were incurred, but in the main they were incurred in connection with the construction of the original project around Fort Collins, Wellington and Cheyenne. They amounted to $6,541.87." (Vol. 26, p. 3588.)

Item 2 in the account "is an amount for general expenses capitalized, $5,714.74. These are charges during 1929 and 1930 to certain job orders under construction at that time, and were for the expense of executive officers, clerical help, and probably a portion of the rent that was charged by the officers to construction." (Vol. 26, pp. 3590, 3591.)

Item 3 is "$79,362.52, which is a charge made on the books of the Company during the years 1930, 1931 and 1932 for interest on non-productive capacity of their plant." By the phrase "non-productive capacity," the witness said, he meant "that the system is designed and built to take care of a future load, and that the system as a whole did not go into operation at the time job orders were closed and interest was charged on the basis of actual usage of the project as compared with what it was designed to serve."

(Vol. 26, pp. 3591, 3592.)

The witness pointed out, by the way of illustration, that the 10-inch main line from Littleton to Boulder Junction was not built to serve the City of Boulder, but was designed to serve everything from Arapahoe Station to Cheyenne, Wyoming. Boulder, however, being one of the points of service upon the 10-inch line, construction of the branch line to Boulder was completed at an early date, and gas was served through the 10-inch line to supply that branch line, but service was rendered through the line to communities north in northern Colorado and Cheyenne, Wyoming; and before the project was complete and, under this concept, the line was placed in "partial use" and service to Boulder commenced in October, 1929. (Vol. 26, pp. 3592-3604.) Witness defined "interest during construction" as "the cost which attaches itself to the funds necessary for the construction of the project." (Vol. 26, p. 3604), and then pointed out:

"*The Witness:* * * * This project from Littleton to Fort Collins and all inter-connected lines was one complete construction project in itself and was not equipped to operate to its capacity until all construction was complete. The final construction of that project was not completed until September 1, 1931, when the final units at Arvada compressing station were available for operation; and the system could not deliver the gas that it was going to deliver until such construction was completed, and in that sense I believe that a large portion of this interest that has been referred to as interest on non-productive capacity could rightly be called and should be called interest during construction."

(Vol. 26, p. 3609.)

* * * * *

Q. Now, Item 1021, General Construction Expenditures, $91,619.13. How did you arrive at this dollar figure on depreciation?

A. I arrived at that figure by taking the average depreciation of all of the accounts prior to that account with the exception of Organization. That is an amount of money that is expended in connection with the construction of the

company and probably should have been distributed among the various accounts, however, it just wasn't feasible at the particular moment to distribute it, and it appears on the books of the company as an individual account, so I tabulated it in that manner and depreciated it as I have told you.

Q. You have that account set up on Page 9 of Statement 3?

A. Yes, sir.

Q. Will you give us a breakdown of that $91,619.13?

A. In the main that account consists of three items. They were general expenditures during construction that were not distributable to various accounts at the time they were incurred, but in the main they were incurred in connection with the construction of the original project around Fort Collins, Wellington and Cheyenne. That amounted to $6,541.87.

Q. Is that your complete breakdown on that one item?

A. No. I think I can go into each item that comprises that $6,541.87.

Q. Let's have the breakdown on that part.

A. Well, the first item charged in 1926 was toll calls, $2.65; blueprints and drawing instruments, $8.81; miscellaneous expense in New York office was $398.85.

Q. Just give us the major ones. It is not necessary to state the smaller ones.

A. There is a charge from the Public Service Company of Colorado for services and expenses of Davis & Castor if I read this correctly, in the amount of $649.22.

There is a charge for the expenses of Mr. Burnham and Mr. Shortess, in the amount of $515.67.

There is a charge for Henry L. Doherty & Company, services and expenses of engineer and superintendent, $712.43.

Q. Is that Henry L. Doherty & Company charge an engineer's fee?

A. No, this is services and expenses of some engineer who was probably out here consulting on a job, or in connection with certain phases of construction.

Q. All right.

A. In the main—

Q. In that charge to Henry L. Doherty & Company, are there any fees included in that figure at all in this exhibit?

A. By "fees," you mean just what?

Q. Fees paid out to anyone or to Henry L. Doherty & Company for engineering services.

The Trial Examiner: You mean service fees, Mr. Lange?

Mr. Lange: Any kind of fees; if they are labeled engineers or services of any character—

The Trial Examiner: Any other fees than the ones he just read?

Mr. Lange: That is right.

The Witness: I see no fees in here with the exception of those for services of individuals or legal fees in connection with Henry L. Doherty & Company's charges.

By Mr. Lange:

Q. Which are the legal fees or other fees you haven't read in that account?

A. Well, going through certain of these charges there are services of an engineer, Henry L. Doherty & Company, $482.14; services and expenses of engineer and superintendent, $712.43; services of resident agent, $52.20; service and expense of C. J. Shortess, $14.55; services of Robinson & Sloan — by the way, that is a legal firm in New York— which amounted to $31.83.

I see nothing in this account that is a fee for other than services of some individual.

Q. All right. Proceed further with the breakdown on that Account 1021.

A. A second item incurred in the account in an amount for general expenses capitalized, $5,714.74. Those are charges during 1929 and 1930 to certain job orders under construction at that time and were for the expense of executive officers, clerical help and probably a portion of the office rent that was charged by the officers of the company to construction.

Q. Do you know how that item was arrived at, the total of it?

A. No, I have the charges to the various job orders, just how the calculation was made, I don't know.

Q. You don't know on what basis the calculations were made?

A. No, I imagine some investigation was made as to an appropriate amount of charge to construction that was necessary due to the work going on at that time requiring the services of the officers and clerical help of the company in posting job orders and things of that nature.

Q. In your investigation of that item, did you find out whether they kept time records on that or not?

A. No, sir, I didn't.

Q. Now, the next item.

A. The next item is an item of $79,362.52, which is a charge made on the books of the company during the years of 1930, 1931 and 1932 for interest on non-productive capacity of their plant.

Q. What do you mean by non-productive capacity of the plant?

A. I mean that the system is designed and built to take care of a future load and that the system as a whole did not go into operation at the time job orders were closed and interest was charged on the basis of actual usage of the project as compared to what it was designed to serve.

Q. Wasn't all of the equipment, the main line equipment, in use at that time? Wasn't it actually in use?

A. No, I wouldn't say—

Q. The main pipe line was not in actual use?

A. Portions of it were partially in use.

Q. What portions of it?

A. Well, the line from Littleton to Boulder Junction and on in to Boulder started partial use in October, I believe, 1929.

Q. All right. What do you mean by "partial use?"

A. Well, the 10-inch line from Littleton to Boulder Junction was not built to serve Boulder. Naturally, when the line was completed into the city of Boulder a portion of the construction costs of that line went into service but not all of the construction cost went into service when they started supplying Boulder.

Q. Not all of them went into service?

A. No.

Q. Why?

A. For the simple reason the line was designed to serve gas north of Boulder and the lines connecting at Boulder Junction with Fort Collins and Greeley and other points in that neighborhood were not completed at that time.

Q. What was that 10-inch line built to serve?

A. The entire system north of Littleton.

Q. The entire system north of Littleton?

A. That is correct.

Q. What effect did Valmont have on that service?

A. I don't believe a line was built to Valmont until 1936, if I remember it correctly.

Q. Until 1936?

A. Yes.

Q. Now, your description of excess capacity of the line and equipment, is that what you say this item of interest covers?

A. I would say that it was non-productive capacity, non-productive costs.

Q. In other words, as the line was built it had to gradually build up to the capacity of use the line would be put to?

A. As far as serving towns are concerned and carrying an amount of gas that it is designed to carry, yes.

Q. In other words, if you had a 10-inch line and started out in service pumping through it only fifty per cent of its capacity, and then in later years it had pumped through it ninety per cent of its capacity, there was an excess there in that interim?

A. That is right. It would be the prudent investment of the company to put in a line which they expected to serve an ultimate capacity rather than to put in a line that would serve the capacity then on hand. That 10-inch could have been displaced, you might say, by an 8-inch line to serve the capacity that was required for that period of years. The 8-inch line would have probably cost 75 to 85 per cent of the cost of the 10-inch line, but the company deemed it wise to install a larger line and invest more money in order to avoid a higher construction cost due to the necessity of paralleling the line with other lines as increased load came on.

Q. In other words, it would have been mighty poor operating practice to put in an 8-inch line there and later have to replace it with a 10-inch line?

A. No, I would say that it was smart operating to put in the 10-inch line.

Q. I say, it would have been poor operating practice to put in the 8-inch line and wait for later development than to put in the 10-inch line.

A. You might say that.

Q. In other words, on your theory there was an excessive capacity there to start off with?

A. That is correct.

Q. Why didn't they put in an 8-inch line there? Was it because it would have been poor operating practice?

A. Because they are — the people who constructed this line were experienced operators and in their judgment they deemed it wise to put in higher initial cost in the investment with the idea of cutting down the ultimate total cost.

Q. All right. Did you take into consideration—strike that.

Do you know what the company's earnings were at the beginning of the first year's operation, and then on down?

A. No.

The Trial Examiner: Mr. Lange, before you go into that I would like to get straightened out on this line to Boulder.

Mr. Willard, did I understand you to say that when that extension was made to Boulder that the purpose of it was to serve some points beyond?

The Witness: Oh, yes. The 10-inch line was designed to serve everything in the North system.

Mr. McCreery: May I interject there?

The Trial Examiner: Yes.

Mr. McCreery: I think perhaps there is a confusion in Mr. Grey's mind as between the main line to Boulder junction and the branch line from the junction to the city of Boulder. I think that is what he has in mind.

The Trial Examiner: You are speaking of this (indicating Exhibit No. 50)?

The Witness: I was speaking of the 10-inch line that runs from the Arapahoe measuring station up to Boulder junction. It was designed to serve the entire North system, but, Boulder, being one of the near points at the end of the 10-inch line, had its construction of branch line completed at an early date, and, naturally, gas was served through the 10-inch line to supply that line, but the project was not complete.

The Trial Examiner: In a project of this kind, where your construction is new, you make provision for the normal growth of business from year to year, don't you, up until the time you level off at a certain period, say, five years after the construction?

The Witness: That is the wise thing to do, yes, sir; but you may not be able — you may not be using the actual money that you put into the construction of that design.

The Trial Examiner: That is true, but your construction, nevertheless, has been entirely completed of the whole system?

Mr. McCreery: May I make a suggestion here? I think perhaps the Examiner misunderstands the distinction between full utilization in a territory and the period prior to the time there is full utilization in the communities. It isn't a matter of growth, it is an extension of the actual use of the line as first premised, and not the continued growth of the gas load. For instance, in the city of Fort Collins, at the outset it didn't even serve Fort Collins because the line wasn't even built, and the compressor capacity wasn't in even to complete Fort Collins on its then present demand, so there are two points involved there, Mr. Examiner, that I think the witness is trying to state.

The Trial Examiner: That is all, Mr. Lange.

By Mr. Lange:

Q. Mr. Willard, in connection with this particular item, did you take into consideration, or have you since then learned what the company's earnings were from the very beginning

A. No, I haven't.

Q. On all of its property?

A. No, I don't know that.

Q. You gave that no consideration in determining whether this interest on excessive capacity was proper or not from an accounting standpoint?

A. That interest on non-productive investment was capitalized by the officers of the company; was made by them, and no doubt it was considered by them good accounting practice. I think your new Federal Power Commission classification indicates that when the good judgment of the officers has been used in the past that changes should not be indicated.

Q. Would you point that out in the Uniform System of Accounts?

A. I think a good illustration of that is the necessity of a two-way street on Page 37. The fourth line starts out: "It is likewise not intended that adjustments shall be made to record in gas plant accounts amounts previously charged to operating expenses in accordance with the Uniform System of Accounts in effect at the time or in accordance with the discretion of management as exercised under such uniform system of accounts."

That has to, of necessity, be a two-way street.

Q. All right, let me ask you this: In your experience in accounting work, where have you found it *justifyable* to set up under General Construction Expenditures interest on unused capacity of plant or excess capacity, or whatever you want to term it?

A. I have experienced a situation in a conversation with a Federal Power Commission accountant where he said that the Commission would probably allow or would allow, and he would include interest capitalized on an item.

Q. Who was the accountant?

A. Mr. Smith, I believe his name is.

Q. What Mr. Smith?

A. I don't know his name but he is now in Joplin, Missouri. He is going over records there.

Q. When did you see him and where?

A. I have talked to him three or four times.

Q. I mean in connection with that particular statement?

A. I didn't personally talk with Mr. Smith in connection with that statement.

Q. Then it is hearsay?

A. He did make a statement to one of my associates along that connection, that associate conveying the information to me.

Q. Your associate then told you?

A. That is correct.

Q. You did not hear this Mr. Smith make that statement yourself?

A. No, I didn't.

Q. Who told you that he had made it?

A. My associate.

Q. Who?

A. Mr. Allen.

Q. Who?

A. Mr. Allen.

Q. What are his initials?

A. H. M. Allen.

Q. H. M. Allen?

A. Yes.

Q. Where is he now?

A. Joplin.

Q. Is he still with your organization?

A. Yes, sir.

Q. What are the initials of this Mr. Smith?

A. I don't know.

Q. Who is he employed with at the present time?

A. The Federal Power Commission.

Q. Who?

A. The Federal Power Commission.

Q. At present?

A. At present.

Q. Joplin, Missouri?

A. Unless he has moved from there within the last week or so.

Q. Where was he stationed before he went to Joplin, Missouri?

A. I have no idea.

Q. Where did this associate of yours speak with him?

A. In Joplin.

Q. And on what work was he at that time?

A. It was in connection with the original cost study of that property.

Q. At approximately what time was that?

A. Oh, it was sometime between — it was during the months of September or October.

Q. What year?

A. This year.

Q. This year?

A. Yes.

Q. This Mr. Smith you speak of is not Mr. Kenneth Smith who is connected with the Denver Regional Office of the Federal Power Commission, being present in this court room at this time?

A. No, sir, it is not that Mr. Smith.

Q. It is not Mr. C. W. Smith who is chief of the Bureau of Accounts under the Federal Power Commission in Washington?

A. I am sure he wouldn't be the Mr. Smith conducting the examination on the books in Joplin.

Q. What character of work was this Mr. Smith doing?

A. He is the accountant for the Federal Power Commission. He came to Joplin to review certain work that had been done there in connection with the filing of the 2D statement of the Federal Power Commission on the property of the Empire District Electric Company.

Q. Is it from that character of hearsay information that you formed any opinion as to how to construe the Uniform System of Accounts for natural gas companies?

A. No, no.

Q. You gave that as an indication of how certain portions of these accounts may be construed?

A. Well, I think this statement here on Page 37, as I said — it has to work both ways, and this amount was charged by the officers of the company at the discretion of the management, and I think it is a proper and correct charge.

Q. When you boil their item of interest on unused capacity or excess capacity you get right down to one of the bases of the old shop-worn going concern value estimate: that is what it is, pure and simple?

Mr. McCreery: I object to that as calling for a legal conclusion.

Mr. Lange: Do you want me to eliminate the phrase "shop-worn"?

Mr. McCreery: No. —

The Trial Examiner: I think Mr. Willard with his experience can answer the question.

The objection will be overruled.

The Witness: I have seen statements of going concern value built on the basis of what is sometimes termed idle plant, but in the main, going concern value appears to me to be that cost that attaches itself to a property due to the fact that it has a seasoned operating organization; is doing a successful business and earning a return which in itself attaches to the value of that property an amount for going concern value.

By Mr. Lange:

Q. It is an item that has very frequently been computed in and made a part of an estimate of going concern value?

A. I have seen it made a part of it, yes, sir.

Q. Have you ever included it in any of your valuations?

A. Going concern value?

Q. Going concern value.

A. Yes, sir.

Q. Strictly in—strike that.

I believe you stated that that was first set up on the company's books in this case — in these proceedings, rather — during the years 1930, 1931 and 1932?

A. That is correct.

Q. Why didn't they set it up right at the beginning when there was the most excessive capacity present?

A. Well, the job order or the construction was in progress — the job orders were not closed — and interest was charged to the construction job order.

Q. Well, it was set up in three separate parcels, wasn't it?

A. Only so far as the three separate parcels were computable.

Q. This, of course, is not interest during construction that is usually an accounting practice, or is it?

A. No, I would say this is interest on non-productive capacity.

Q. What is interest during construction?

A. Interest during construction is the cost which attaches itself to the funds necessary for the construction of the project.

Q. And this so-called interest on excess capacity or non-used capacity of the plant would still be properly set up, even if the earnings of the company from the very beginning were sufficient?

A. I don't think the earnings have any bearing as to whether interest should be set up or not.

I think I would like to correct a statement I made a moment ago about this being strictly non-productive interest. This project did not go into full operation until the entire system was completed, and that was not completed until in March 1930 when I believe the first interest on this capacity was computed.

Q. Well, why did you stop during 1931? Why didn't you keep on setting up some factor of interest on some excess capacity as you kept on building up and until you reached some limit? Why did you stop in 1932?

A. I can't answer that as I don't know.

Q. Had it reached the so-called capacity in 1932?

A. I wouldn't be a bit surprised; that is, with the exception of probable economic depression that had some effect on it.

Q. Then when it went down, why didn't you set it up again when there was an economic depression and when it didn't use its capacity?

Mr. McCreery: This witness isn't setting up anything, Mr. Lange.

Mr. Lange: I am asking him—

Mr. McCreery: May I finish, please, Mr. Lange?

Mr. Lange: Pardon me.

Mr. McCreery: The question is wholly irrelevant as to any testimony this witness is giving.

Mr. Lange: This witness has stated that he knows accounting practice, and he has set up a very complicated exhibit, attempting to justify the inclusions of items over a certain period and I want to know what his reasons are.

The Trial Examiner: Some of your questions, Mr. Lange, go into the action of the management at a time which this witness would have no knowledge or conception—

Mr. Lange: He is giving his reason, Mr. Examiner, why such items would be justifiably set up.

The Trial Examiner: I think it is perfectly proper for you to approach the matter on that basis.

Mr. Lange: That is what I want from him, the information as an accountant.

The Trial Examiner: Restate the question, Mr. Lange.

By Mr. Lange:

Q. Why as an accountant haven't these items of interest on excess capacity been set up beyond 1932 on the company's records?

Mr. McCreery: I object to the question as irrelevant, not proper cross examination, and it has nothing to do with the testimony of this witness.

The Trial Examiner: You say, why as an accountant these items set up —

Mr. Lange: In the proper accounting practice in the light of the experience of this company and in the operations he has studied.

The Trial Examiner: Do you mean by that, Mr. Lange, you want this witness to state whether or not the item should have been set up or should not have been set up, in his opinion?

Mr. Lange: Whether in proper accounting practice, if that item were set up in 1933, whether it would have been a proper item.

Mr. McCreery: This witness is not testifying on the theories of accounting. He has not testified along the lines about which Mr. Lange made inquiry, and I object to it.

The Trial Examiner: Necessarily, Mr. McCreery, he must have some knowledge of accounting in undertaking--

Mr. McCreery: I wasn't seeking to discount that, Mr. Examiner.

The Trial Examiner: Objection overruled. Can you recall the question now, Mr. Willard?

The Witness: No.

The Trial Examiner: Will you read the question, Mr. Reporter?

(The question referred to was read by the reporter, as set forth above.)

The Witness: I don't believe it would have been a proper item because of the fact that I feel that at the end of 1932 the system had reached its somewhat normal expected load and there was no additional non-productive capacity except that produced by economic conditions after that time.

By Mr. Lange:

Q. On what basis do you say that the company had reached its normal expected load at that time?

A. I have observed the deliveries of gas of the system and it is my recollection that during the period of 1932, discounting the fact that the country at large was going through a depression, I think that the system had had or would have reached its capacity at that time.

Q. Well, now, in this—

The Trial Examiner: Just a moment, Mr. Lange.

We will stand in recess for five minutes.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

The Trial Examiner: The hearing will be in order.

The Witness: Mr. Examiner, I would like to correct one statement I made and amplify another one.

Some time back Mr. Lange asked me if there were any fees included in that portion of Account 1021 which amounts to $6,541.87. I did overlook one item in here that is a five per cent New York engineering charge amounting to $101.82 that is a part of that total fee.

By Mr. Lange:

Q. Paid to whom?

A. Paid to Henry L. Doherty as fiscal agent for Cities Service Company.

Mr. McCreery: That is under the management contract, Mr. Lange.

The Witness: And there is another little amplification on a statement in regard to this interest. This project from Littleton to Fort Collins and all inter-connected lines was one complete construction project in itself and was not equipped to operate to its capacity until all construction was complete. The final construction of that project was not completed until September 1, 1931, when the final units at Arvada compressing station were available for operation; and the system could not deliver the gas that it was going to deliver until such construction was completed, and in that sense I believe that a large portion of this interest that has been referred to as interest on non-productive capacity could rightly be called and should be called interest during construction.

By Mr. Lange:

Q. Interest during construction?

A. Yes, sir.

Q. You stated a while ago that that was an entirely different item.

A. I stated that interest during construction was interest on construction funds during the construction of the project and this project was not complete in its construction until those final units at Arvada were ready for service.

Q. I understood you to say that these items in this exhibit are reflected as per company books.

A. They are the figures that are o the books of the company.

Q. Isn't it a fact that the company's books and records do not call it interest during construction?

A. I believe that is correct, yes, sir.

Q. And what do the books and records of the company call it? What is the exact description of it on the company's books and records?

A. I believe it is written in the books of the company that it is interest on excessive capacity—

Q. Very well.

A. However, that is just a statement on the books of the company, and still the project was not completed and it may just as well have been termed interest during construction.

Q. That is your opinion, but the company's books and records state otherwise?

A. That is correct. There are probably lots of statements on the books of the company that are not definitely the statements that actually refer to particular situations.

Q. All right, isn't it a fact that on Statement 2, as you will note, interest during construction is included in—well, in No. 1013, Main Lines, $1,489,252.13?

A. There is an amount included in some of these charges that is in the job order as interest during construction.

Q. Yes.

A. And there are other job orders included in this main line account where funds were expended and interest during construction does not appear on the company's books.

Q. All right. In this item under Account 1013, Main Lines, the item of $23,232.19 is included as interest during construction?

A. Would you read that figure again, Mr. Reporter?

(The record referred to was read by the reporter, as set forth above.)

The Witness: That is correct. That amount is listed on certain job orders as interest during construction.

Mr. Lange: All right.

Q. Do you know how much of that amount was actually paid out by the company?

A. I believe it was all charged to interest expense of the company.

Q. Were any of the earnings credited back at that time to offset that?

A. I don't know. I didn't go into that.

Q. You didn't go into that?

A. No.

Q. You made no investigation of that phase of it at all?

A. No.

Q. Now, on your Statement 1, construing that statement—

The Trial Examiner: Had he finished with the breakdown of Item No. 1021, Mr. Lange, or were you still on it?

Mr. Lange: Yes, that is right.

Q. Are there any additional items in there that you didn't name?

A. No, the three items I named comprise the total of that account.

Mr. Lange: That is what I thought.

The Trial Examiner: Mr. McCreery, for the convenience of the Examiner, I would like to have the breakdown of this Account 1021 on Statement No. 2 submitted as an exhibit.

Mr. McCreery: What account number?

The Trial Examiner: Account No. 1021, this general construction expenditure. I believe Mr. Willard broke it down to some extent.

Mr. McCreery: You desire that we compile an exhibit?

The Trial Examiner: I would like to have it.

Mr. McCreery: We will so submit an exhibit.

The Trial Examiner: Very well.

I will save Exhibit No. 112 for that exhibit.

Mr. McCreery: Very well.

The Trial Examiner: You may proceed, Mr. Lange.

By Mr. Lange:

Q. Referring to Statement No. 1 on Exhibit No. 114, in the preparation of that statement, why did you ignore the items of Contribution in Aid of Construction?

A. Statement No. 1 includes the cost as reflected on the books of the company for the physical property owned by the company. I didn't take into consideration anything other than the fact that they owned this property; that it was the cost of the property.

Q. Oh, well, you paid no attention to the items that Mr. Davis set up in Exhibit No. 105 as deferred credits, customers advances for construction, $2,982.14, and contributions in aid of construction, $9,193.83?

A. No, sir.

Q. You did not?

A. No sir. The company owns this property and I put it in the cost of that property to the company.

Q. And in connection with the determination of that you didn't give any consideration to these two items?

A. No, sir.

Q. And did you make any segregation as between used and useful property and any other property of the company?

A. I made inquiries as to the used or useful condition of all of the property, and in my opinion the entire amount is used and useful.

Q. How did you arrive at that conclusion?

A. For the mere fact that it is all filled with and delivering gas or has an immediate prospect of delivering gas due to negotiations now in process.

Q. Now, in connection with this exhibit of Mr. Davis', did you hear his testimony?

A. Yes, sir.

Q. And you heard his statement with reference to that item in connection with the International Metals Corporation?

A. Yes, sir.

Q. In the amount of $4,547.11?

A. I don't recall that figure.

The Trial Examiner: You are referring to Exhibit No. 105, Mr. Lange?

Mr. Lange: Yes, sir.

Q. Do you know of that item?

A. I have a recollection of an item of $2,982.14.

Q. What does that represent?

A. Just how it is reflected on Mr. Davis' statement, I can't say, but it is a refundable line extension deposit.

Q. Received from whom?

A. The U. S. Metal Foundation.

Q. You say it is a refundable item?

A. I believe so, however, I would want to contact Mr. Davis on that point.

Q. Then you don't know either way about that?

A. Not that, no.

Q. You gave no consideration to it in the construction of this Statement 1?

A. No, sir. I know that at the present moment that line is not actually delivering gas, however, I also know that negotiations are under way for a prospective early delivery of gas from the line and that the territory is building up for possible service from domestic customers.

Q. Did you hear Mr. Davis testify that it has been over two years since anything definite has occurred with reference to that matter?

A. With reference to changing that amount from one account on the balance sheet to another, yes, I heard him say that.

Q. And if it runs along for another year, then they would probably act? The company would probably act?

A. Mr. Davis would have to answer that question.

Q. Did you in the preparation of your exhibit take into consideration anything that Mr. Davis testified to or presented in his Exhibit No. 105?

A. I only considered the fact that the company owns the physical property and included in my exhibit the cost of that physical property.

Q. And what is that?

A. All of the pipe lines, measuring stations, land, furniture, and other items as set forth in my exhibit.

Q. Now, with reference to this item in connection with

International Metals Corporation, what is the cost of that item to the company?

A. Are you referring to the cost of the line serving that smelter?

Q. Yes.

A. I have a total of $3,114.91.

Q. Does that include the measuring station?

A. I think not.

Q. What is that?

A. I don't have that segregated.

Q. You wouldn't know what that amount is?

A. Not offhand.

Q. Have you inspected that property?

A. No. I saw the building, the measuring station, but I didn't go into it and inspect it.

Q. Have you been out there to see the situation as it actually exists with reference to that line?

A. That building, I am informed, is now being used as a garage of some nature for some department of the base at Fort Logan and negotiations are under way to serve them gas.

Q. The line is not actually in use?

A. To my knowledge it isn't.

Q. It is not, is that right?

A. That is correct.

(Vol. 26, pp. 3587-3617.)

* * * * *

Q. Mr. Willard, on Statement 3, Page 1 of Exhibit 111, Account 1000, "Lands in Fee, Compressor Stations, Sullivan," you have an item of $807.21. What is that item?

A. That is the tract of land located out near the Interstate line near Littleton.

Mr. McCreery: You mean Colorado Interstate Gas Company's line?

The Witness: That's right.

By Mr. Lange:

Q. What is it used for?

A. That land was purchased in connection with the building of a compressor station.

Q. A compressor station which in fact was not located on it, was it?

A. That's right.

Q. Well, what is its used and useful status to the Colorado-Wyoming Gas Company at this time?

A. I believe that that might be considered a proper cost of the Arapahoe compressor station. It was an expenditure in connection with that station that was not finally used but was expended with the idea of location of the station.

Q. Well, why wasn't it used?

A. I don't know that.

Q. The station has in fact been built, hasn't it?

A. It is in the process of being constructed now.

Q. And is located on a different piece of land than this?

A. That is correct.

Q. Then, why is this piece of land used and useful for the Colorado-Wyoming Gas Company's present operations?

A. The company quite often is involved in the expenditure of money in connection with a particular project which is not finally used in that project. I think a typical example would be in the purchase of rights of way. Agents must be sent out in advance to purchase rights of way on a proposed pipe line route, and when the construction comes through, certain hazards or other conditions may change plans that cause them to buy other rights of way. However, I feel that the total cost of all rights of way purchases is a part of the construction cost of the line.

Q. Regardless of whether they are used or not?

A. Very definitely. It is a necessary cost. It is always incurred.

Q. And do you know when this particular piece of land was acquired?

A. No, not exactly, but I would venture an opinion, within the last year.

Q. And when was the other land acquired on which the station is now located?

A. Probably this summer, maybe early spring.

Q. Do you know the exact location with relation to the two tracts of land?

A. By lot, or—

Q. By distance.

A. No, sir, I don't know, but I believe they are probably about ten miles apart.

Q. About ten miles apart?

A. That's just my opinion. I haven't actually looked at them on the map.

Q. Well, then, this Sullivan station land, as you name it, isn't near the other one and has no relation to the other one with reference to use, has it?

A. Oh, no.

Q. Now, you have an item on Page—well, it's not numbered—Statement 3, Page 3, of Exhibit 111, Account 1013, "Main Lines, Miscellaneous—12,848 feet." What is that item?

A. Those are small lines that were built at the same time the main Littleton-Boulder Junction to Boulder line was constructed, probably three or four different lines of small size that were included in that work. I believe I could name them for you if you want them.

Q. Yes.

A. There is 281 feet of 2-inch line to Arvada; 2,381 feet of 2-inch line to Mount Air; 155 feet of 3-inch line to Edgewater; 4,161 feet of 3-inch line to Mount Air, and 5,870 feet of 4-inch line to Edgewater.

Now, those two sizes of pipe in the Mount Air and Edgewater lines are the continuous run to the particular location.

Q. Now, I see on Page 5 of Statement 3, Account 1013, "Main Lines," you have a group of miscellaneous lines?

A. Yes, sir.

Q. What are they and where are they located?

A. Well, there are numerous small lines that total the various feet that you see listed on that page, and I have them tallied here, if you want to know just what they are.

Q. Yes.

A. The line to Coors Brewery is 936 feet of 1-inch; there is also 60 feet of 1½-inch in connection with the same line; and 452 feet of 2-inch in the same line. The Berthoud line consists of 9,337 feet of 2-inch and 5,865 feet of 2½-inch. The line to International Metal Foundry, I think the name of it is, is 3,750 feet of 4-inch. In connection with the Johnstown line there is 485 feet of 2-inch. The Kuner-Empson line is 1,705 feet of 2-inch. The Longmont branch has 2,991 feet of 3-inch. The Loveland branch has 2,829 feet of 4-inch. The Lutheran Sanitarium branch 2,115 feet of 1½-inch. The Marston branch 2,666 feet of 2-inch. The Fort Warren branch 12,353 feet of 3½-inch.

Q. On Page 8 of Statement 3 under Account 1014, "Compressor Stations," you have an item of a scrubber, $1,482.51. What is that equipment and what is it used for?

A. That equipment is at the Wellington compressor station. Its use was for cleaning the gas in connection with the intake of the Wellington field at the original installation, and I believe that is now connected with the line going to Cheyenne. I am not sure of that latter.

Q. Are you sure that it is being used at present?

A. I know it is there.

Q. Is that what it is, a scrubber?

A. Well, it is a scrubber or—I think that is the common name, dust scrubber. I think on the purchase invoice of this item it named it a pulsation eliminator.

Q. And right above that you have an item of an oil tank. Where is that located?

A. That oil tank is in a vertical position—well, it is at the same end of the building where the generator is located? Whether that is east or west, I am not sure.

Q. At Wellington station?

A. Yes, sir.

Q. Is it actually being used?

A. I believe it is, yes.

Q. Did you see it?

A. Yes, I saw it.

Q. Did you ascertain whether or not it is in use?

A. Well, I am quite sure when the station is in use—

Q. I mean the oil tank, this oil tank you have listed.

A. I believe it is in use.

Q. It is?

A. Yes.

Mr. Lange: That is all for the present.

The Trial Examiner: Pardon me a moment, Mr. McCreery. Did you state for the record, Mr. Willard, the cost of that line that runs up to this smelter—what's the name of that? I don't find that cost set forth in your exhibit.

The Witness: No, it is included as a part of those miscellaneous lines that is in that 27,000-dollar figure at the end of the individual lines. I can give you the cost. I think I stated that a short time ago.

The Trial Examiner: I didn't recall that you had. Maybe you did.

The Witness: $3,114.91.

The Trial Examiner: $3,000—

The Witness: $3,114.91.

By Mr. Lange:

Q. Now, is that just the line exclusive of the measuring station?

A. That is correct.

(Vol. 26, pp. 3645-3651.)

* * * * *

Commission Exhibit No. 199 (Appendix this Record).

Gas Plant Accounts (Commission Ex. 199).

Bob Vaught, employed as an accountant by the Federal Power Commission at the Denver Regional Office, under Kenneth L. Smith, "Examiner in Charge of Field Assignments," was assigned to the study involved in Exhibit 199, entitled "Colorado-Wyoming Gas Company, Gas Plant Accounts and Examiner's Adjustments," prepared by the witness.

BOB VAUGHT called as a witness by and on behalf of the Federal Power Commission, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Lange:

Q. Please state your name.

A. Bob Vaught.

The Trial Examiner: How do you spell your last name?

The Witness: V-a-u-g-h-t.

By Mr. Lange:

Q. Mr. Vaught, what is your occupation?

A. Accountant.

Q. Are you presently employed by the Federal Power Commission?

A. I am.

Q. At the Denver regional office?

A. I am.

Q. How long have you been so employed?

A. Since July 1939.

Q. In the capacity of an accountant?

A. That is right.

Q. During your employment with the Federal Power Commission, I will ask you whether you have been assigned to do accounting work in connection with the Colorado-Wyoming Gas Company?

A. I have.

Q. And you did that work relative to the present proceeding?

A. I did.

Q. I will ask you further whether in connection with that assignment you prepared an exhibit—strike that.

I will ask you at this time to read into the record a statement of your qualifications and experience in connection with this character of accounting work and your general accounting experience.

Mr. McCreery: May I ask if you have copies of that statement available?

The Witness: Not on the qualifications.

Mr. Lange: No, not of the qualifications. He just prepared that himself.

Mr. McCreery: No copies are available?

Mr. Lange: No copies are available.

The Witness: "After graduating from high school in 1927, I attended the University of Texas for one and one-half years, from September 1927 to February 1929. The work taken during this year and a half included courses preparatory to entering the University's School of Business.

"From July 1929 to June 1930 I was employed by the Texas Electric Service Company, an Electric Bond and Share property, in its district office at Eastland, Texas. My duties during this period with the Texas Electric Serv-

ice Company consisted principally of consumer's accounting. In June I resigned my position with this company and during the summer of 1930 continued *by* studies at the University of Texas.

"In August 1930, I again accepted a position with the Texas Electric Service Company, this time in its district office at Eagle Pass, Texas, and remained there with the company until May 1937. During this period of approximately seven years with the Texas Electric Service Company at Eagle Pass, my experience covered practically every phase of public utility accounting usually performed in district or branch offices. My duties included, among other things, the preparation of all entries at the close of the accounting period and posting same to the general ledger, preparation of financial statements, and all accounting relating to construction, payroll and the material and supply account.

"In July 1937, I accepted a part-time position in the General Land Office of the State of Texas, and also attended the University of Texas until January 1939. During this time I completed all except ten semester-hours of work toward a bachelor's degree in Business Administration.

"My principal field of study or major subject was accounting. Courses in accounting included advanced accounting principles, audit procedure, cost accounting mergers and consolidations, and municipal accounting. Other courses were required and completed in economics, finance and banking, statistics, and business law. A limited amount of research was required relating to problems of public utility management and regulation. In November 1938 I passed the business law, auditing and accounting theory parts of the examination for certified public accountants in Texas.

"From January 1939 to July 1939 I was with the Texas Unemployment Compensation Commission as field auditor. My duties with the Texas Unemployment Compensation Commission consisted principally of the examination of payrolls to determine contributions due under the unemployment section of the Social Security Act.

"I resigned that position to accept a position with the Federal Power Commission in July 1939. I was immedi-

ately assigned to duty in connection with the investigation of Colorado-Wyoming Gas Company.

"On December 1, 1940 I was transferred to the Commission's Division of Original Cost with headquarters in Washington, D. C."

By Mr. Lange:

Q. Mr. Vaught, in connection with your assignment pertaining to accounting matters on Colorado-Wyoming Gas Company, how long a period of time did you devote to that matter?

A. Oh, from July 1939 until about the middle of January 1940, all of my time was spent on this assignment, then from May 1940 until about October 1940, the fall of 1940, being about twelve months.

Q. During that period of time, did you have occasion to examine the books and records of Colorado-Wyoming Gas Company?

A. I did.

Q. Where was that?

A. In their office in the Continental Oil Building here in Denver.

Q. Denver, Colorado?

A. That is right.

Q. In connection with the examination of those books and records of the Colorado-Wyoming Gas Company, did you prepare an exhibit entitled "Gas Plant Accounts and Examiner's Adjustments"?

A. I did.

Q. Is this the exhibit I now show you?

A. It is.

Mr. Lange: Will the reporter please identify it?

The Trial Examiner: It will be marked for identification as Exhibit No. 199.

(Exhibit 199, Witness Vaught, marked for identification.)

By Mr. Lange:

Q. Mr. Vaught, did you in connection with the preparation of that exhibit No. 199 entitled "Gas Plant Accounts and Examiner's Adjustments," also prepare a written statement explaining it and giving in substance the nature of its contents?

A. I did.

Mr. McCreery: Before reading that, may I suggest this to facilitate the hearing, that we will not interrupt to make objections during any of the reading of the written statement with the understanding that the whole matter will be held for subsequent examination, if that is agreeable to the Examiner.

The Trial Examiner: Very well.

Mr. Lange: That is agreeable.

The Witness: "This report sets forth the investment of Colorado-Wyoming Gas Company in Gas Plant, as of December 31, 1939. By account classification, it shows the cost of that plant per the company's books, a series of adjustments made in journal entry form, and the Gas Plant Investment after the application of the adjusting entries. It also shows components of cost of the several classes of plant.

"The adjusting entries, twenty-four in number, running from No. 200 to No. 223, are given on Pages 1 to 36, inclusive. They are of two kinds: those that reclassify plant by transfers of amounts from one plant account to another, which entries are denoted by the letter 'R' prefixed to the numeral, and those that involve accounts other than plant accounts. The purpose of the entries is to adjust the plant accounts so that they will more nearly reflect the legitimate original cost of Gas Plant devoted to the public service. The explanation given as a part of each entry states the reason and basis for each adjustment.

"Schedule No. 1, which appears on Page 37, follows the journal entries. This tabulation shows by plant accounts grouped according to function, the following: the investment per books, as of December 31, 1939, the total amount of Examiner's debit and credit adjustments, and the investment as adjusted, as of December 31, 1939. These elements are explainable as follows:

"(a) The investment per books is related to the company's primary account numbers and is segregated as accurately as possible into functional groups by the Examiner. It may be noted, however, that for convenience the per books figures include measuring stations in lateral and main lines under Transmission Plant. The Examiner

has reclassified to Distribution Plant the cost of measuring stations property relating directly to the sale of gas.

"(b) The Examiner's adjustments, columns 5 and 6, are the total debits and credits for each plant account taken from a recapitulation of the twenty-four entries shown in Subschedule No. 1-A; the difference between total credit adjustments of $494,014.59 and total debit adjustments of $389,656.24, or $104,358.35, consists of a net debit to income accounts for 1939 and prior of $106,817.43, a debit of $815.76 to Capital Stock Expense and a net credit of $3,274.84 to the Reserve for Depreciation (cf. columns 14 and 15, Subschedule No. 1-A).

"(c) The Plant Investment as adjusted (Schedule No. 1, Column 7) is the amount that is recommended to the Commission for acceptance as the original cost of the company's property.

"Each of the Schedules Nos. 2 to 14, inclusive, with their respective subschedules, supports in detail one of the Gas Plant Accounts appearing on Schedule No. 1. These schedules give the investment per books, the Examiner's adjustments, and the Investment as adjusted, in the same manner that Schedule No. 1 does. Schedules Nos. 3, 4, 6, and 12, representing four plant accounts that comprise about 99 per cent of the Company's Gas Plant Property, per books, are commented upon separately below.

"Schedule No. 3 shows the investment in Main Transmission line divided into four sections, each of which is supported by a subschedule that gives the quantity and cost of pipe in its section, together with labor, overhead, and other construction costs.

"Schedule No. 4 shows the investment in twenty lateral lines, and its twenty subschedules, designated 4-A to 4-T, inclusive, support the investment, line by line, with the detail of quantity and cost of pipe, together with labor, overhead, and other construction costs.

"Schedule No. 6 shows in detail the investment in two compressing stations.

"Schedule No. 12 is a tabulation showing the basis adopted by the company in its computation of Interest on

Excess Capacity,' which it capitalized, and the manner in which that computation was made. This element of 'Interest' capitalized at $79,362.52 by the company has been completely disallowed by the Examiner and is discussed further, below.

"Except for reclassification entries, which consist principally of transfers of amounts from one plant account to another, based in many instances upon information furnished by the Commission's Bureau of Engineering, and which need not be discussed here, the larger and more significant entries which should be pointed out are Entries Nos. 200, 202, 205 and 206.

"Entries Nos. 200, 205, and 206, relate to 'Interest,' which has been capitalized by the company on two bases and consists of the ordinary 'Interest during Construction' and the unusual item of 'Interest on Excess Capacity.' By Entry No. 205, the amount of Interest during Construction capitalized by the company in its Gas Plant Accounts ($23,718.50) is eliminated, and by Entry No. 206 the amount computed by the Examiner to take its place ($14,978.74) is substituted. By Entry No. 200 charges made for 'Interest on Excess Capacity' to Gas Plant during the years 1930, 1931, and 1932, amounting to $79,362.52, were eliminated from Plant by transferring them to Surplus. These charges, made after construction of the company's plant was complete and in operation, were based upon a portion of the cost of property south of Fort Collins, Colorado, whose capacity was in excess of that required to handle the volume of business actually done; they were made at the rate of 6 per cent per annum. The practice of capitalizing Interest on Excess Plant is unusual and, furthermore, was made for a period in which the company's return on its Gas Plant Investment averaged about 13 per cent per annum.

"Entry No. 202, in which Gas Plant Adjustments are charged with $83,886.65 and Reserve for Depreciation and Gas Plant in Service credited with $1,094.08 and $82,792.57, respectively, takes out of the accounts of tangible Gas Plant the amount of fees paid to Henry L. Doherty & Company and Cities Service Company on a 5 per cent basis for engineering services less amounts thereof previously retired. These fees are eliminated from Plant Investment because

it is not clear that they represent the actual cost of services rendered, or, for that matter, that service was ever actually rendered for them. The entry and the data accompanying it, which comprise seven sheets of the report, provide a full explanation of the arrangements with the two Doherty companies."

By Mr. Lange:

Q. Now, Mr. Vaught, referring to your Exhibit 199, I note that the title page bears the approval of Kenneth L. Smith, Examiner in charge of field assignment, and Harold Tomlin, Examiner in charge of regional office, and W. E. Baker, chief accountant. All of the men named are with the Federal Power Commission?

A. They are.

Q. And are presently serving in the capacity as stated in that title page?

A. That is correct.

(Vol. 66, pp. 9510-9520.)

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Q. Mr. Vaught, will you refer to your Entry No. 206 as summarized on Page 38, and the detail as set forth on Page 16 of Exhibit 199?

A. Yes.

Q. To get an idea of this, referring to your detail on Page 18—for instance, the Boulder Junction to Fort Collins item where you have recomputed the interest at $3,695.03—I would like to have you give me the details on just how you worked that item out. If that is in the working papers, if we can have them, that will be satisfactory.

Mr. Lange: Can you supply that from your working papers that are here, Mr. Vaught?

The Witness: Yes.

Mr. McCreery: I want that in complete detail.

Q. Can you explain that now or later?

A. I believe I have it here. I will give you Boulder Junction and Fort Collins.

Mr. Lange: As I understand it, that is the item of $3,695.03 appearing on Page 16, Exhibit 199?

The Witness: That is correct.

Mr. Lange: As I understand it, Mr. McCreery, you want to have made available to you the working papers of Mr. Vaught?

Mr. McCreery: I think it would facilitate the examination at this time if we delay it until we have that data, if it is agreeable with the Examiner?

The Trial Examiner: That is very agreeable.

Mr. McCreery: That would mean any part of them?

Mr. Lange: That would mean any part of them and any part pertaining to this exhibit would be available to you.

Mr. McCreery: For the present we will pass up any reference to that particular entry.

The Trial Examiner: Very well.

By Mr. McCreery:

Q. I passed up Entry No. 204, Mr. Vaught, which is adjustment for cash discounts obtained by Cities Service, $2,844.90 to which you make reference on Pages 12 and 13. It was your idea to eliminate both the 5 per cent and the cash discount in question?

A. Well, this is independent of the 5 per cent.

Q. I understand that, but I asked if they were two independent and accumulative eliminations according to your setup.

A. That is true.

Q. Now, referring to Entry 207 summarized at Page 37 and shown on Page 18, will you explain the occasion for your elimination of that item?

A. Well, this is a reaccounting of these expenses after they were incurred. The company had originally charged the original items to expense and about six months later the amounts were reversed by the company's traveling auditor. The local accounting staff considered the items then applicable to operating expense rather than construction.

Q. In this particular instance you were giving weight to what you say were the entries made by the accounting staff?

A. The local acounting staff.

Q. The local accounting staff of the company?

A. Yes.

Q. You are giving weight to that?

A. Yes, in light of the fact that no evidence was shown that the expense was related to construction.

Q. As a matter of fact, there was no evidence and the accounting officers made no contrary entries with respect to certain of these capital accounts; you gave no weight to the action of the local accounting officers in other cases, and by giving no weight you eliminated the capital account. In this case you gave it weight and by eliminating it it was also eliminated from the capital account?

A. I am not giving weight to the accounting—

Q. You state that you do.

A. In light of the fact that no evidence was shown.

Q. There was no evidence cited in the other case?

A. There was no evidence of the items charged to capital account. If there was evidence they were proper charges to the capital account the entry as made by the traveling auditor had the effect of correcting an accounting of error on the part of the local accounting staff.

Q. As a matter of fact, Mr. Vaught, suppose the local officers had originally put them in the capital account and the traveling auditor put them in the expense account. There wouldn't have been any question in your mind about that, would there?

A. If what?

Q. Supposing these entries had originally been put in the capital account by the local accounting staff and then when the traveling auditor came by shortly after the close of the year he had transferred them to expense. There wouldn't have been any difficulty about that in your mind, would there?

A. If properly chargeable to expense, that would be where they would belong.

Q. But being there was no evidence, you would have let them rest there, wouldn't you?

A. No, I think you would have to have evidence to show they were properly chargeable to capital account, but you can charge them to the expense account.

Q. I have just given you an illustration to which your answer isn't responsive. I stated that supposing this par-

ticular entry had been charged to capital account by the local acounting staff in whom you seem to have some confidence in connection with this particular entry; then the traveling auditor comes by in a few months and says, "No, I want to put that into expense." You wouldn't have questioned for a minute his result, would you?

A. Well, I think he would be exercising a choice there that he would probably be justified in charging to expense.

Q. You would have gone with him?

A. Even though it might be chargeable to capital.

Q. You wouldn't have questioned his determination?

A. If he exercised his choice to charge it to expense rather than capital, I would have.

Q. Why didn't you?

A. Because he charged it to capital. He charged it to the capital account without evidence to show it was properly chargeable to the capital account.

Q. So that is the reason?

A. That is true.

Q. But there is no evidence in either case, is there?

A. Well, sometimes you have to decide these things in the view of lack of evidence rather that what evidence there might be.

Q. What is the evidence?

A. The fact that the evidence there was none.

Q. That is an interesting slant. I appreciate that. As there was no evidence there and it was finally adjusted by the auditing department into the capital account, you disagree there with the final adjustment because there is no evidence?

A. Because there is no evidence—

Q. One way or the other—

A. to show they were properly chargeable to capital account.

Q. Let me ask you this point: Supposing you were making an examination of these books in 1930 and it seemed to be to your advantage from the premise which you were working to make as large a showing on income as possible, that being the thing in your mind under this supposed examination, you are not then under this supposed examination concerned at all with the capital account; you don't care

what the capital account is, but it is in your premise to make as large an income account for the year 1930 as possible. Now, what would be your approach?

A. Let's see what you mean. A person to do that would be more of a manipulator than an accountant.

Q. That might be so, Mr. Vaught. I wasn't trying to characterize, I was just trying to see what the approach would be.

A. The approach would be from the strictly accounting standpoint for such a matter—

Q. As a mater of strict accounting, there is no presumption one way or the other, is there?

A. As to what?

Q. As to which account it belongs.

A. Yes, I think it presumes it belongs to expense.

Q. I mean a general presumption which you are going to use in determining this. In the principle of accounting is there a presumption as to one way or the other whether it is in capital or income account in these cases which may be close to the border line? Is there such a principle of accounting?

A. Yes, after the management or the company itself has exercised the choice they should then go along in the same way and continue to be consistent.

Q. In other words, when the entry has been made, presumably in good faith and so on, the presumption is that is where the entry should be?

A. If it is not an error, yes.

Q. What do you mean "error"?

A. Well, a bookkeeping error.

Q. Well we are not talking about bookkeeping errors. We were talking about, as I assume, principles of accounting. If you put down the figure 5 instead of the figure 6, that would be an error. This isn't a matter of mere technical errors. This is a matter, as I understand you, of what is proper accounting. After the entry is made, is there a presumption under the rules of accounting as you understand them in favor of the entries made, whatever the entry is?

A. If there is no error, yes.

Q. What do you mean by an error?

A. If it is an entry such as this, that is a charge on the books of the company such as this charge here, then the presumption is that it is the correct accounting practice.

Q. Why is it the presumption that it is the correct accounting practice, Mr. Vaught?

A. The company exercises its right to charge an item like you said, a border line case, and they are going along in the same way and are consistent in the handling of such matters.

Q. If that is true, doesn't the same presumption you are talking about operate as to these other items which were in fact entered by the company and which you are now trying to reverse, there being no evidence one way or the other?

A. No, there is no item that can get into your plant account unless properly chargeable to your plant account.

Q. That is a presumption, isn't it? Is this an accounting presumption against putting anything in the plant account?

A. I don't follow you on that question.

Q. Is there a presumption in accounting against putting an item into the property account?

A. I don't believe I understand your question.

Mr. McCreery: Read the question.

(The question referred to was read by the reporter as set forth above.)

The Witness: I don't believe I can answer that.

By Mr. McCreery:

Q. You don't know?

A. I wouldn't say I don't know. I just don't understand the question.

Q. That is a rather strange answer, if you don't understand the question that is one thing, but when you state you won't say you don't know the answer, you do know?

A. The presumption is to charge it to the account that it belongs to.

Q. Is the presumption the item has been charged to account to which it belongs when it was so charged?

A. (Pause).

Q. Is there any presumption in accounting in favor of the entry when made as to whether it is to be property account or income account?

A. If I understand you—yes, if the entry in itself is not in error?

Q. How are you going to prove it is in error in the absence of evidence?

A. The absence of evidence will prove it to be in error, yes.

Q. There is a presumption, but the very absence of evidence proves it is in error, is that it?

A. In an item such as this, I would say yes.

Q. We will come to this item. I am talking about some general ideas you have about accounting right now. Let's get our general picture set and then we will deal with this item further. Will you answer my question in general? I have asked you the principle and theory of accounting, you being a certified public accountant, and I want to know what the picture is as you understand it.

A. As to what?

Q. Just the question I asked you, Mr. Vaught.

A. Read it.

(The question referred to was read by the reporter, as set forth above.)

By Mr. McCreery:

Q. —having already stated there is a presumption in favor of the entry?

A. As to a charge of whether or not it is applicable to either expense or capital, there is no evidence to show that it is applicable to capital, and it follows it must be an expense.

Q. In other words, you say there is no presumption in favor of any entry, is that true?

A. That is probably true.

Q. You just said a few minutes ago there was a presumption in favor of it. Please make up your mind.

A. I misunderstood your question. I probably don't understand yet what you are driving at.

Q. When an entry is made on the books under principles of accounting and in the absence of any evidence other than the entry itself, is there a presumption that that entry was properly made?

A. No, as all entries have to be made—

Mr. Lange: You are limiting your question purely to an accounting standpoint?

Mr. McCreery: Yes.

The Witness: There must be documentary evidence for all entries. There should be.

By Mr. McCreery:

Q. You have your voucher and no other evidence than that, the fact that the money was paid for this particular service or this particular thing and charged to this account, there being no question but what the money was paid; the question being whether having charged that item or voucher to this account in the absence of anything else, there is a presumption that that was a proper charge?

A. The entry will have to be decided along with the information shown by the voucher.

Q. So that your views of the principle of accounting are that in such a case there is no presumption that it was a proper entry?

A. No, there is no presumption here that it is a proper entry.

Q. I didn't ask you about "here," I asked if that is the principles of accounting. You answer my question, please.

A. I have never seen it stated just that way.

Q. Whether you have seen it stated that way or not, please answer my question.

A. Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: "In such a case," which case do you mean?

By Mr. McCreery:

Q. Well, we will have to start over again because I have to find out about this. I am not very well informed on accounting and I thought you were and I thought I could get some information from you. When an entry is made, charged to a certain account—there being no question but that the money was spent for the purpose indicated and that the services or goods were received, the charge is made to a certain account by the accounting officers of the company,

under such circumstances—is there any presumption in the absence of all evidence, either that that was a proper charge or that it was not a proper charge to that account?

A. As to whether or not it was a proper charge to capital or expense can be determined only by the documentary evidence behind the voucher.

Q. Then you say there is no presumption either way, either that it was or was not, is that right?

A. Between capital and expense, I would say the presumption would be it would be expense.

Q. Under what system of accounts is that the presumption?

A. Well, it is—there is your conservative accounting.

Q. As you understand accounting?

A. That is true.

Q. Under what system of accounting do you know that it is the accepted practice? Will you state that, please?

A. Under what system that is the practice?

Q. That you know anything about. I am not interested in a statement. It is proper accounting in general that I am interested in. I want to know the authority upon which you proceed in this manner. I have asked you a general question and it bears no relation to any of these entries that you have made.

A. Conservative accounting is a principle of all systems of accounting.

Q. Which one in particular?

A. Of all, any system.

Q. Produce one.

A. This one here (indicating).

Q. What is "this one here"?

A. The Uniform System of Accounts for natural gas companies.

Q. All right, show us where it is in that system of accounts.

A. I can't show it to you in black and white.

Q. Oh, you can't?

A. No.

Q. It is like a hidden tax?

A. No, that is not true, but in the case of Entry No. 207—

Q. We are not dealing with any entries now. We are dealing with general principles. We can apply the principles

later. We don't build our views of accounting to fit the entries ordinarily. We have our basic principles to start with and that is where we are now.

A. I have applied the principle of conservative accounting—more conservative accounting.

Q. Where do you find that principle stated?

A. It is one of the principles.

Q. That is what I am trying to get at. State the principle, now that we have it down to a principle?

A. A principle for what?

Q. You have just said it was a principle. You should know about the principle you are discussing.

A. The principle for what?

Q. You can answer my question. You have stated in every system of accounts it is the principle involved. Now, what is the principle you say you are relying on, then? You seem to know all about it except when you are asked to answer a question.

A. Read the question.

Q. There is no question. I asked you what the principle is you are talking about.

A. Do you want me to refer you to some text books or what-not?

Q. Well, I just want you to answer the question.

A. I don't know what the question is.

Q. You don't? We'll start all over again, then, Mr. Vaught. In accounting—you are a certified public accountant, are you not?

A. No.

Q. Are you not?

A. No.

Q. But you have studied accounting?

A. Yes.

Q. And you are here as a trained accountant?

A. That is right, yes.

Q. When the accounting officers of a company make an entry charging a certain item to a certain account, there being no question but that the services or goods or whatever was involved in the payment of money were furnished to the company, the only question being is, having charged it to a certain account, there being no other evidence before

you as an accountant at that point, is there any presumption either that it is a proper charge or that it is not a proper charge to the particular account to which it was made? I believe that is an intelligent question.

A. The charge itself—the mechanical part of making the charge, the entry on the books, would not make the presumption that the entry was correct.

Q. All right, would there be a presumption that it was not correct?

A. One way or the other.

Q. No presumption one way or the other?

A. No.

Q. So in the entire absence of presumption, the item stands, then, unless there is disproof—I mean, the charge stands to a particular account, then, unless there is proof to the contrary, is that true?

A. No, I think as between capital and expense there would be a presumption.

Q. There is a presumption. All right, now, then as between capital and expense, where an item has been charged to capital, there being no evidence aside from the fact of the service or the goods furnished and paid for and received, and the charge itself, the presumption would be what? that it should be charged to expense?

A. That it should be charged to expense.

Q. That is your presumption?

A. Yes.

Q. Now what is your authority in accounting for that position?

A. The fact that it is the more conservative accounting to charge the item to expense.

Q. Now, wouldn't it very much depend upon what the purpose of your inquiry was?

A. No, I don't think so.

Q. It wouldn't at all?

A. No.

Q. Now, there wouldn't be other exhibits in this case where the other presumption had been indulged, would there, by the accounting staff of the Commission? Do you know of any?

A. Read that.

(The question referred to was read by the reporter as set forth above.)

The Witness: No.

By Mr. McCreery:

Q. You don't know of any other?

A. No.

Q. And you think that this is a principle of accounting but you don't know where to find it?

A. It is a conservative principle of accounting.

Q. Where is it found?

A. It is just one of your principles of accounting.

Q. Isn't there any place where it is stated, to your knowledge?

A. Yes.

Q. All right, produce some. I want to know about this.

A. May I have a few minutes? I believe I can get it for you.

Q. Do you want to take a little recess, then?

The Trial Examiner: I wonder, Mr. McCreery,—

Mr. McCreery: I can leave that and go on to another subject.

The Witness: All right, I can get it later.

By Mr. McCreery:

Q. Now, in connection with this traveling expense, you have thrown that to expense because there is no evidence on the voucher, is that it?

A. That is right, no evidence to show that the expense is related to construction.

Q. All right. Now, going to your Entry No. 208, why did you throw that to expense?

A. It was an expense relative to securing new business.

Q. It was an expense in the determination of whether a line would be built to Greeley, was it not?

A. That is, in determining whether or not—in securing the town border service at Greeley.

Q. And in that determination, in considering the building of a line, that is not capital but expense, is that your theory?

A. That is right, on this $375, yes.

Q. So that is, in its nature, you feel an expense item?

A. That is true.

Q. Have you ever dealt with that kind of an item before in accounting practice?

A. With items of expense relating to the securing of new business, yes.

Q. Give me an illustration of what you consider analogous to this.

A. I can't say that I know of one offhand.

Q. How's that?

A. I can't say that I know of one offhand.

Q. Is there a difference in your mind between an established operation in which there is expense to acquire new business for the existing business, and a determination of whether a new line will be built? Is there any distinction in your mind between those two cases?

A. In a new company just starting out, there would be.

Q. With respect to a new construction of line?

A. A company that before has not been in operation, yes, that is, not picking out a segment of the line—

Q. Now, let me get this. We are supposing that this Fort Collins-Littleton line which was not then built and was under consideration, together with the extensive line from the neighborhood of Loveland to Greeley, but which was not then built but later built, constituted the entire system of the Colorado-Wyoming Gas Company, that there had been no Fort Collins-Cheyenne portion; then you say the situation would have been different, is that it?

A. No, I say the situation would have been different back in 1925.

Q. Well, we are just going at it in a different way. You mean before there had ever been any gas business at all?

A. That's right.

Q. You don't give any consideration to the fact that the Fort Collins-Cheyenne structure, line and business was at a point of closing because of exhaustion of gas supply, and a brand new picture all the way from Littleton to Fort Collins was entered upon with a completely different setup. That wouldn't alter the case, would it?

A. No.

Q. I see; and the fact that it had under consideration the building of a line from Loveland to Greeley, twenty miles,

and that this related to the determination of that question as a thing that had to be determined before the line was built. That still wouldn't make it a capital account with you?

A. Not in 1930, no.

Q. Why not in 1930?

A. Well, I say, the company was in operation.

Q. I see, just because it was in operation?

A. Well, at that point it wasn't new business. It was expense in regard to securing new business.

Q. New business is the development of volume from existing facilities, ordinarily isn't it? Isn't that new business expense? Isn't that what new business expense ordinarily means?

A Yes, with any additional facilities that might be necessary in order to take care of this new business.

Q. Then under your principle, how can you capitalize at all the line from Loveland to Greeley which is an addition to the line after the main line is built? That is new business.

A. That isn't—that hasn't been my assumption at all.

Q. I am asking you, where are you going to draw the line between what you have said and that picture that I have just suggested to you?

A. Read that.

(The question referred to was read by the reporter as set forth above.)

By Mr. McCreery:

Q. That's new business, that Greeley line. Now, how do you justify the capitalization of that?

A. The line itself?

Q. Yes.

A. No, that is a property addition.

Q. Property addition.

A. That is true.

Q. Now, any expense in connection with that would properly be an addition to plant, wouldn't it?

A. On an item such as this—

Q. Wait a minute, I am speaking generally.

A. Not this item—

Q. Wait a minute, I am speaking generally. Any expense involved in putting that line across there, completing it.

would be an addition to plant, wouldn't it? Your original setup of the line—

A. The expense for the actual construction, yes.

Q. With necessary overheads?

A. That's right.

Q. All right, now, and the preliminary work by which you determine it is justified to build the line is also a capital charge, isn't it?

A. Generally, yes.

Q. Generally, yes. Do you know exactly what this expenditure was involved in Entry 208?

A. I think I do, yes.

Q. State what it was.

A. It was a question of whether the city of Greeley would be furnished with Tex s gas or gas from Berthoud field.

Q. Yes.

A. And I think it was necessary for the company; in other words, Colorado-Wyoming or Public Service Company to show to the City Commission of Greeley that it would be impossible for them to serve Greeley with Berthoud gas. I don't know what the reason was, but it follows probably that the reason had to do with setting a rate, probably.

Q. You don't know that?

A. Well, I'm speaking just general knowledge. I don't know for sure.

Q. You don't know what was included in this report?

A. No.

Q. You didn't see the report?

A. I believe I did see the report. I don't recall.

Q. You knew what was in it?

A. I knew what was in it at the time. I don't recall now.

Q. You don't know now?

A. No.

Q. So whether that was a report on rates or on the availability of gas or whether a line would be built from Berthoud by the people that owned that field or whether Colorado-Wyoming Gas Company could better furnish a supply of gas. Those questions you don't know whether they were involved in this report and in this demonstration, do you?

A. I don't recall all the details.

Q. What detail do you recall?

A. I do know that the determination on this entry was made in view of the facts at hand and it was determined that this was not a proper charge to—

Q. What are the facts? Have you got them?

A. The fact that it was a new business expenditure and should be charged to new business.

Q. That is a conclusion, Mr. Vaught. Now, what were the facts upon which you determined this was purely a new business expense?

Mr. Lange: Are there any items in your working papers that might be indicative?

The Witness: I think there is more information, yes.

By Mr. McCreery:

Q. Will you produce that after lunch, Mr. Vaught?

Mr. Lange: Will you make a note of that so you can check it?

The Witness: Yes.

By Mr. McCreery:

Q. Now, Mr. Vaught, your entry No. 210, what are the items involved in that item 210?

A. The items making up the $119.36?

Q. Yes.

A. $40.16 of it represents expense for general books.

Q. Now, setting up the books at the outset is not a proper organization expense?

A. Not your operating ledger; that is, ledgers used for—

Q. The office expense incident to organizing the activities is not an organization expense?

A. The what?

Q. Is that not an organization expense?

A. Read that.

(The question referred to was read by the reporter as set forth above.)

The Witness: The office expense in the organization of the company, yes, that is organization expense.

By Mr. McCreery:

Q. And this you say is not organization?
A. No.
Q. Under what authority do you say that?
A. Well, the nature of the charge itself.
Q. It is your conclusion?
A. Well, it is the only conclusion that can be made.
Q. What authority have you got?
A. I can give you the authority on that.
Q. All right, I'll be glad to have it. Now, the next item is what?
A. $79.20.
Q. That is what?
A. Filing fees on corporate property located in Colorado for the year 1931.
Q. Those filing fees are fees required to be paid by every corporation that starts to do business, are they not?
A. Yes.
Q. On an enlarged capital. Do you remember what these fees were?
A. Yes, they were on enlarged—that is, on the enlarged capital employed in Colorado.
Q. It was obviously necessary to have an enlarged capital in connection with the substantial expenditures involved in building the system from Fort Collins to Littleton, was it not?
A. That is true, yes.
Q. Were the original filing fees of the original capital proper organization expenses?
A. Not in 1931, no.
Q. Well, were they in 1925?
A. That might be questionable.
Q. It might be questionable. Now, do you know which it is?
A. Well, these filing fees were not paid until after—I will have to check this voucher 2833. I can do it now or later?
Q. You are checking which now?
A. Sir?
Q. Which were you checking?
A. I would like to check the working papers on this voucher 2833.

The Trial Examiner: Do you have them right there, Mr. Vaught?

The Witness: Well, these were paid in February 1931, and charged to the Littleton-Boulder line, which had gone into service in 1929.

By Mr. McCreery:

Q. Now, what was the charge? What was it in payment of, Mr. Vaught?

A. Corporate capital employed in Colorado for the year 1931, $264,000.

Q. Because of the enlarged capital of the company, was it not?

A. That is true.

Q. That's right, occasioned by the expenditures in these lines.

A. That is right.

Q. All right. Now referring to your Entry 211—

Mr. Lange: I might ask right there, Mr. McCreery, that item included the old as well as the enlarged capital, did it not? Included the whole? That is, the tax you are speaking of there? What did that cover? What do your work sheets show that that covered?

The Witness: It covered additional capital of $264,000.

By Mr. McCreery:

Q. It was just an additional item as I understand. If it is not it is subject to correction, of course.

A. That is true, additional property employed.

Mr. McCreery: It was the additional property employed.

Mr. Lange: In the year 1929.

Mr. McCreery: It was payable after the event, but it was paid because of the embarking of additional capital, in the enterprise.

Mr. Lange: All right. Pardon me for interrupting.

Mr. McCreery: I think we have a common understanding there. If there is any correction there, of course, it can be made.

Q. Now, referring to your Entry No. 211, Mr. Vaught, Pages 38 and 21, will you explain why—are those items taken out of the capital account?

A. That is true. $202 is charged to operating expense for the year 1926; $815.76 is charged to capital stock expense.

Q. So they are both taken out of your capital account under your figure?

A. They are removed from the plant account.

Q. What are those items?

A. The first item, director's fees, covers director's meeting as of December 19, 1925.

Q. What was involved at that time? Was that the organization meeting of the company?

A. No, the organization meeting, I believe, was held around the first of December.

Q. What was the purpose of this meeting? to complete organization and qualify the corporation for business?

A. I believe we have the minutes on that. The first meeting of the incorporators and subscribers to the capital stock was held December 1, 1925.

Q. When was the second meeting held?

A. The second meeting was held December 18, 1925, I believe.

Q. And when was the third meeting held?

A. The third meeting was held February 27. The December 19 meeting there is probably the meeting held on December 18.

Q. There wasn't any meeting on the 19th, was there?

A. No, there doesn't seem to be. That was probably shown by the voucher itself.

Q. Now, what was this $200 in payment for?

A. Fees of the directors for their meeting held December 18, 1925.

Q. One meeting or two meetings?

A. Two meetings were held.

Q. The original meeting was an organization meeting and the subsequent meeting was also an organization meeting?

A. There were two meetings held on December 18.

Q. I will ask you this without having you read the minutes—this will shorten the record unless it is desired to read the minufes—was all of the business transacted at those meetings purely organization business?

A. No.

Q. What was it, then?

A. At the first meeting held December 18, 1925 the by-laws were approved. Any two officers could sign checks, notes, and so forth. That was the business carried on at the first meeting, December 18, 1925.

Q. And the second meeting?

A. The second meeting of December 18, 1925, at it a resolution was adopted accepting the offer of H. O. Caster dated December 18, 1925; officers were authorized to issue 4,990 shares of capital stock therewith which should be deemed fully paid and not liable for any further assessment. Our officers were authorized to pay to or upon the order of H. O. Caster $76,800.

Q. That was all the business transacted?

A. That was all the business transacted.

Q. Were there any director's fees paid for the first meeting in December?

A. I would have to check that to be sure—I don't believe there were.

Q. So these are the only executive fees paid in connection with the organization of that company as far as your records show or subject to any correction you want to make?

A. Subject to check, I would say yes.

Q. You have given in substance all that was transacted in those two meetings?

A. That is correct. The only thing would be the offer made by H. O. Caster, which was accepted—

Q. By which the company organized itself and started in business?

A. This was relative to a contract between the Fort Collins Producing Company and Colorado-Wyoming Gas Company.

Q. Which is already in evidence?

A. I believe it is.

Q. What was done at the meeting in December? Was that an organization meeting, too, the first meeting?

A. The meeting on December 1?

Q. Yes.

A. The subscription agreement to the capital stock was drawn up.

Q. Were officers elected and given authority to prepare bylaws and those things?

A. That is true, yes.

Q. So the activity of the meeting was strictly organizational?

A. That is correct.

Q. Now, your next item, fee for filing annual report, is that the report of the organization of the company?

A. That was all the information shown on the voucher itself.

Q. The next item is tax stamp, $50.76. What is that?

A. That is the stamp necessary for the transfer of capital stock.

Q. Transfer or original issue?

A. Yes, that is true.

Q. It was for the original issue, is that right?

A. Whether this is stamps for the original issue, I don't know.

Q. You don't know?

A. No, the information doesn't show on the voucher. It might be—

Q. You don't follow that?

A. Probably I can check on that and be positive.

Mr. McCreery: I would like to put it in subject to correction that it was the original issue and if there is any correction you can make it.

Mr. Lange: Very well.

The Witness: How much those items—that is right.

Mr. Lange: However, I don't know that there is sufficient information available for Mr. Vaught to check it. He may not have it in his working papers.

Mr. McCreery: He can come over and look at the stock book.

The Witness: It is the original issue because it is transferred to the capital stock expense.

By Mr. McCreery:

Q. The original issue?

A. That is correct.

Q. What is the item of tax on capital stock?

A. It is tax on the original stock.

Q. Let's go to the next item dated June 28, 1932 entitled "Organizational Issue, Documentary Stamp, $750."

A. That speaks for itself as to what it is.

Q. Does that cover the enlarged capital occasioned by the increased plant of the company?

A. That is the documentary stamp tax on the original issue.

Q. At the time of the capitalization of the line expense from Fort Collins to Littleton, is that what it covers?

A. No, I don't—

Q. You don't know?

A. No, it covers the—

Q. You have it charged to capital stock expense.

A. That is true.

Q. Do you want to check that?

A. Yes, because I know I have information in my working papers on that.

Mr. Lange: I believe I might ask Mr. Vaught a question at that point.

When you speak of "original issue," that refers to this increase in capital stock, doesn't it, not going back to the original stock?

The Witness: Yes, sir.

Mr. McCreery: That is right, but it is the original of the increase as distinguished from the original issue of 1926.

The Trial Examiner: Do you want to check your working papers?

The Witness: I can.

Mr. McCreery: It is clear as far as I am concerned.

The Witness: That is why you were trying to make something out of it—

Mr. McCreery: I think we have a common understanding.

The Witness: That is why I wanted to check on it.

By Mr. McCreery:

Q. Where did you eliminate those as not part of the organizational expense?

A. This merely transfers it to the capital stock expense.

Q. But it went out of the plant account?

A. It went out of the plant account.

Q. Why did you put them out of the plant account?

A. Because under the Uniform System of Accounts they belong under capital stock expense.

Q. And it should be taken out of the plant account?

A. Yes, and set out separately on your balance sheet.

Q. But out of the plant account?

A. Out of the gas plant account, yes.

Q. Are they still in your rate base?

A. I don't know. I wouldn't say. I mean—

Q. These entries were made long prior to the Uniform System of Accounts, Page 54, Item 301, Organization.

The Trial Examiner: What is your question, Mr. McCreery?

Mr. McCreery: The Uniform System of Accounts, to which he is referring, under Gas Plant Accounts, Intangible Plant, states:

"301. Organization.

"This account shall include all fees paid to Federal or State governments for the privilege of incorporation and expenditures incident to organizing the corporation, partnership, or other enterprises and putting it into readiness to do business.

"Items

"1. Cost of obtaining certificates authorizing an enterprise to engage in the public utility business.

"2. Fees and expenses for incorporation.

"3. Fees and expenses for mergers or consolidations.

"4. Office expenses incident to organizing the utility.

"5. Stock and minute books and corporate seal."

Of course, these items were entered long prior to the passage of the Act or the promulgation of the system of accounts, but since the witness referred to it, I wanted to

call his particular attention to that in connection with his statement.

The Witness: But the system does provide for the capital stock expense to be set out in a separate account.

By Mr. McCreery:

Q. Where is that?
A. Page 25.
Q. Page 25?
A. Page 25 of the Uniform System of Accounts.

"151. Capital Stock Expense.

"A. This account shall include all commissions and expenses incurred in connection with the original issuance and sale of capital stock, including additional capital stock of a certain class of series as well as first issues."

Q. Go ahead.
A. It says:

"B. When any issue of capital stock, or portion thereof, has been retired, there shall be credited to this account the balance herein in respect to such retired stock. (See Balance sheet instruction 5.)

"C. The utility may amortize the balance carried in this account by charges to Account 414, Miscellaneous Debits to Surplus."

Mr. Lange: Which is the section applicable in your opinion?

The Witness: Yes.

By Mr. McCreery:

Q. That is Section A, Account 151, Page 25?
A. Yes.
Q. You claim that gives you authority at this time to take out of the capital account these items of this type entered long before the establishment of the Uniform System of Accounts, and notwithstanding the gas plant account set up on Page 54, is that your construction of all this?
A. Those items are not items of organization expense.
Q. In other words, you claim they are not organization expense?

A. That is true.

Q. And the whole extent of your authority for that claim is Page 25, Section 154-A? Is that it?

A. I think that is sufficient.

Q. Is that what you are reading now?

A. Yes.

The Trial Examiner: The hearing will stand in recess until 2:00 o'clock this afternoon.

(Whereupon, at 12:40 o'clock, p. m., a recess was taken until 2:00 o'clock, p. m., of the same day.)

Afternoon Session, 2:00 P. M.

The Trial Examiner: The hearing will be in order.

Whereupon Bob Vaught, the witness on the stand at the time of recess, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination (Continued).

By Mr. McCreery:

Q. Mr. Vaught, referring again to Exhibit No. 199, Page 16, with respect to the computation of interest as you have there made it, interest during construction, referring to the second item entitled "Boulder Junction to Cheyenne," during month of first construction charge and date of initial service or operation and the note wherein you recompute the interest at $3,695.03, would you tell me just how that computation was made?

A. The monthly charges were set up beginning with the month of April as the month in which the first charge was made, April 1929, and taking the monthly charges therefrom, from April through November, and eliminating the Examiner's adjustments, arriving at an adjusted monthly expenditure upon which to base the rate; that is, upon which to figure the interest, and then apply the monthly interest rate to arrive at the amount of interest applicable to it, and the Boulder Junction to Fort Collins line, the construction on it was broken down in two parts which were the expenditures to the date of service to the Great Western Sugar Company, interest being figured on the charges by months to that date. Subsequent to that date the line was extended on from the Greeley Junction to Fort Collins.

Q. Was the line built subsequent to that date or put in service subsequently to that date?

A. It would probably be better to say subsequent to the date it was put into service.

Q. With reference to your interest computation, as I understand the figures, your have allowed interest to November 30, 1929 on the entire line to Fort Collins from Boulder Junction?

A. That is true, yes, sir.

Q. Then from November 30, 1929 to the end of January 1930 when the gas was first served through the Fort Collins line, there was no interest allowed between those two dates on that part of the line extending from Greeley Junction to Fort Collins in the way that you computed it, is that not a fact?

A. You say there was no interest allowed?

Q. From November 30, 1929 to January 31, 1930 on that part of the Boulder Junction to Fort Collins line from Greeley Junction north to Fort Collins.

A. Interest was allowed only on the additional expenditures.

Q. But not on the previous construction?

A. That is true.

Q. Now, you got a figure of total interest without subsequent expenditures of about $3,800 on that line?

A. That is correct.

Q. Now, under your theory of computation I take it that because you hadn't any breakdown in the cost of the Boulder to Fort Collins line segregated down to the Greeley Junction to Fort Collins line to the north and the Greeley Junction to Boulder line on the south you weren't able to make that computation, were you?

A. That is right, because we couldn't break it down between those two points.

Q. Now, assuming, Mr. Vaught, that you had given—strike that.

Assuming that you had available to you the construction cost prior to November 30, 1929 of the line from Greeley Junction north to Fort Collins; you could then and that would be in conformity with your tabulation and set up there, have figured the interest which should have been allowable on that part of the line during the interval from November 30 to January 31, is that right?

A. That is true.

Q. Assuming on an allocation of cost which is subject to the check of the Commission's staff, the cost to November 30, 1929, of the Greeley-Fort Collins section, that is, the Greeley Junction to Fort Collins section was $116,577.80. An interest computation for the month of November and January would amount to $1165.77, would it not, at a six per cent rate?

A. It would be approximately 60 days' interest on that amount of $116,577.80.

Q. If these figures that I have supposed are correct; that would be a proper correction to make in your computation, wouldn't it?

A. I think so, yes.

Mr. McCreery: Mr. Examiner, there were certain entries made by the Commission's staff in connection with this exhibit concerning which we had some discussion during the noon recess. We feel that we can facilitate the presentation of it by further going into the working papers, so with respect to a portion here—I suppose it isn't necessary to read it into the record—there are certain entries we are going to have checked over between the Commission's engineers and accountants and our own engineers and accountants which we believe will facilitate it, so that part of the examination we would like to defer until after a further conference has been had.

The Trial Examiner: Very well, Mr. McCreery.

Mr. Lange: That is entirely agreeable.

By Mr. McCreery:

Q. Referring to Page 39, Exhibit 199, you have transferred to Gas Plant Account Held for Future Use the facilities to serve the International Metal Foundation in the amount of $4,430 under your Entry No. 212. On what basis did you make that transfer, Mr. Vaught?

A. The amount shown by the entry is the same figure that appears on the books of the company, and the purpose of this entry is to transfer facilities for serving International Metal Foundation to Gas Plant Held for future use which is in accordance with the Commission's Uniform System of Accounts, Page 16, instruction under 100.4, "Gas Plant Held for Future Use," which states:

"A. This account shall include the original cost of property owned and held for use in gas service under a definite plan for such use. There shall be included herein property acquired but never used by the utility in gas service, but held for such service in the future under a definite plan, and property previously used by the utility in gas service, but retired from such service and held pending its reuse in the future, under a definite plan, in gas service. This includes land and land rights held to insure a future supply of natural gas."

Q. Do you happen to know whether or not there are at this time negotiations for immediate use of this line?

A. No, I only know that there have been negotiations—

Q. You knew negotiations were going on?

A. That is true.

Q. And that is all you know? You have made no further inquiries?

A. That is all.

Mr. McCreery: If the Examiner pleases, subject to the checking of the working papers heretofore indicated, we would like now to discontinue further examination on this exhibit if that is agreeable.

The Witness: I believe, Mr. McCreery, you asked me for a letter this morning in regard to a request made to the company.

Mr. McCreery: Yes, that is right.

The Witness: I can probably read it into the record.

Mr. McCreery: May I see it first?

The Witness: Yes.

(Conference between counsel.)

Mr. McCreery: This is in relation to the inquiry made?

The Witness: You asked if I made a request in regard to the five per cent engineering fee.

Mr. McCreery: This is it?

The Witness: Yes.

Mr. McCreery: I will stipulate that that may be typed

in the record without reading it, if it is agreeable with counsel.

The Trial Examiner: Is that agreeable, Mr. Lange?

Mr. Lange: Yes.

Mr. McCreery: It was just to show that he made a request for certain items as of the date indicated, making the request to the company.

Without reading it into the record it can be copied in by the reporter.

Mr. Lange: I think that would be the best way to handle it, to have it copied into the record. It will speak for itself.

Mr. McCreery: The letter is without the detailed schedule attached to it?

Mr. Lange: Yes.

Mr. McCreery: Then it will be copied in without the schedule.

The Trial Examiner: Very well.

(At the direction of the Trial Examiner, the following letter was copied into the record:)

"August 31, 1939

"Colorado-Wyoming Gas Company, 407 Continental Oil Building, Denver, Colorado.

"Attention: Mr. H. P. Davis, Secretary.

"Gentlemen: In connection with the examination of the plant account of your company as of December 31, 1938, it has been noted that your records do not include information showing the actual legitimate cost of certain capitalized intercompany charges.

"For the purpose of reference the charges in question have been summarized in detail on Schedules Nos. 1 and 2, respectively, attached. Schedule No. 1 shows charges billed by Henry L. Doherty & Company and Cities Services Company totaling $114,180.13, and Schedule No. 2 shows those billed by Public Service Company of Colorado totaling $12,065.15.

"The supporting evidence heretofore available for examination in connection with the items listed will not permit release of the report of the Division of Accounts without an appropriate qualification in respect to the items in question. It is assumed, however, that the company may desire, if feasible, to produce further evidence in substantiation of the legitimate cost of these charges, and if such evidence is made available it will be given due consideration.

"Very truly yours,
"KENNETH L. SMITH (Signed),
Examiner of Accounts."

"Enclosures.

Mr. Lange: I might ask the witness at this time if he has any statement to make with reference to that inquiry.

The Witness: It might be pointed out that the company did not furnish us with additional information in order that we might verify as a proper charge that amount of approximately *to* $126,000, of which $83,886.65 was the five per cent engineering fee. The balance of the amount covers miscellaneous services of Mr. Burnham, Mr. Bussard and Mr. Shortess and other miscellaneous items, both payroll and other expense, and no information was ever received as to the correctness of the charges; however, the five per cent engineering fee is the only amount that we have disallowed.

Mr. Lange: These were all New York charges?

The Witness: They were all New York charges and charges coming from the Public Service Company of Colorado.

Mr. Lange: So as I understand it, although there are other items you inquired about and concerning which you did not receive information, you disallowed only the one item?

The Witness: That is right, the only item that was disallowed. In other words, on Page 84 of the exhibit is an amount which shows to be payroll items charged by Henry L. Doherty & Company. That was the only information shown by the voucher, however, we did not disallow this amount even though the information made available to us was not sufficient.

Mr. Lange: Is that Page 84, Exhibit 199?

The Witness: Payroll items by Henry L. Doherty & Company, $1152.

Mr. Lange: In other words, that was one item upon which you had not received the information that you inquired about but you still did not disallow it?

The Witness: That is right. Most of the items we discussed with Mr. Davis and Mr. Shortess and arrived at a satisfactory solution; that is, the company did not give us the information in regard to these items but we did discuss them with the company officials.

Mr. McCreery: Have you covered all of those items with the company officials aside from the five per cent engineering fee?

The Witness: That is true.

Mr. McCreery: Did you discuss the five per cent engineering fee with the company officials as to what character of service was rendered in connection with that five per cent engineering charge?

The Witness: I believe we did, yes. Mr. Davis told us that at this late date it would probably be impossible for him to furnish from the New York records the details of these charges.

(Vol. 66, pp. 9555-9604.)

* * * * *

Q. Refer to page 38 of your exhibit. I notice Entry No. 200 refers to elimination of interest on excess capacity.

A. That is right.

Q. In considering that column, did you consider at the time that in the years 1928 and 1929 and 1930 the available gas supply of the Colorado-Wyoming Gas Company as it was then derived from the Wellington field of the Continental Oil Company was in process of rapid exhaustion?

A. No, I didn't investigate that.

Q. You didn't consider that?

A. No.

Q. Did you consider the fact that there had been developed in the Colorado-Wyoming system as it existed prior

to the construction of the line from Fort Collins to Littleton a demand of approximately a million, six hundred thousand Mcf. annually?

A. No.

Q. You gave no thought to that?

A. No.

Q. Did you know that there had been and was actually developed a load and service aggregating that or substantially that amount in Fort Collins and in the Cheyenne area?

A. No.

Q. You did not have that in mind?

A. I didn't consider it.

Q. Did you have in mind the occasion for construction of the line from Fort Collins to Littleton to connect with the Colorado Interstate line at that point? Do you know why it was done?

A. Yes.

Q. Why was that?

A. It was to deliver Texas gas north to Fort Collins.

Q. And why was it necessary to deliver the Texas gas to Fort Collins and the Cheyenne area?

A. My understanding was that it was caused by the depleted conditions of the Wellington field.

Q. The Wellington field was rapidly depleting?

A. That is right.

Mr. McCreery: These are non-controversial facts. I am not trying to enter into an engineering phase with this witness.

Mr. Lange: The witness of his own knowledge doesn't know of any of the conditions obtaining in the Wellington area or in the field?

Mr. McCreery: That is right. I am not trying to get into a technical discussion. I am asking him if he has these facts under consideration in connection with this particular account.

Mr. Lange: As to whether there is any controversy about it, the record will speak for itself.

Mr. McCreery: That is right.

Q. Did you have in mind that as between the years 1929

and 1930 and again as between the years 1930 and 1931 the very substantial decrease from year to year in those two years of the supply of gas from the Wellington field? Was that in your mind in considering this?

A. No, it wasn't.

Q. You did not have in mind that there was a construction from Fort Collins to Littleton directly to take care of that load which I have stated was approximately 1,600,000 Mcf. annually?

A. Read the question, please.

(The question referred to was read by the reporter as set forth above.)

The Witness: No, I did not.

By Mr. McCreery:

Q. Do you know whether as a matter of fact that the supply of gas from the Wellington field rapidly depleted in those years and the new line from Fort Collins to Littleton was put into service to take up the difference between the dwindling supply and the existing demand in the Fort Collins and Cheyenne Area?

A. That would necessarily follow.

Q. Did you have it in mind in your consideration of this account?

A. No, I did not.

Q. I notice on Page 4 you refer to the interest on excess capacity; on Page 3 is an unusual item, and then on Page 4 you make this statement:

"These charges, made after construction of the company's plant was complete and in operation, were based upon a portion of the cost of property south of Fort Collins, Colorado, whose capacity was in excess of that required to handle the volume of business actually done;"

You referred in that statement to the subsequent development of load in the territory of Loveland, Longmont, Boulder, and the territory between Fort Collins and Littleton, did you not?

A. Well, I am referring to the—that is the basis upon which the company made the—

Q. I am asking what you referred to, Mr. Vaught.

A. Here?

Q. Yes. Was that what you had in mind?

A. I was referring to the basis—

Q. I am asking you what you meant by that statement.

A. That the plant was complete and in operation.

Q. But the volume of business you are talking about, to what were you referring?

A. I was referring to the company's basis upon which they capitalized this interest, that is, it was their determination that it was an excess.

Q. I am asking you what your determination was, because you have undertaken to reverse the account and I am asking you what determination was made on your part, Mr. Vaught. It is obvious you were not following what the company determines it will be so I am asking you what your determination and basis was.

A. I don't think I follow your question very well.

Q. Perhaps it isn't very clear.

The Fort Collins-Cheyenne load in the approximate amount I have given, which is for the purpose of this question, was not a load to be developed but was at that time an existing load?

A. It was, yes.

Q. And is it not true that at this particular time what had been the original system of the Colorado-Wyoming Gas Company was completely changed and what was in effect a brand new system constructed and placed in operation on the completion of the connection with Colorado Interstate Gas Company at Littleton and the connection at Fort Collins with the old system on the north?

A. Well, it was a development, yes. I wouldn't say it was entirely a new system.

Q. It was fundamentally different, was it not?

A. It was, yes.

Q. Did those matters enter into any consideration on your part in considering this account No. 200?

A. No.

Mr. Lange: You mean Entry No. 200, do you not?

Mr. McCreery: Entry No. 200. It should read Entry 200, Exhibit 199, Page 38.

Q. Referring to Entry No. 201, will you explain why that elimination was made, entitled "Elimination of Arbitrary Percentages of 1929 and 1930, General Expenses"?

Mr. Lange: Mr. McCreery, are you referring to Page 3, Exhibit 199?

Mr. McCreery: I am again referring to Page 38, the summary page, Entry No. 201. If he wants to refer to Page 3, that is quite all right because that is the detail. I have taken the summary sheet to start with.

The Witness: You have asked me the reason why?

By Mr. McCreery:

Q. Yes.

A. On Page 2 of the exhibit the reason is set forth as to the elimination of arbitrary percentages for 1929 and '30.

Q. Upon what evidence did you determine that the items were arbitrary?

A. Page 3 shows in 1930 after the 1929 expenses had been charged on the books of the company the auditors for Henry L. Doherty & Company recommended 25 per cent of certain expenses and salaries of administrative officers be charged to the capital account. It is arbitrary—

Q. Where is the evidence on that?

A. Page 3 of the exhibit.

Q. Page 3 doesn't state just what you have stated, Mr. Vaught.

A. It shows that the percentages used were arbitrarily set at 25 per cent.

Q. Let me a[illegible] you this: Would any method of allocation on a percentage basis be arbitrary to your own mind?

A. No, not any percentage, no.

Q. Will you explain why this is arbitrary?

A. Well, the company had no experience on which to base—we didn't have any evidence where they had made a study to determine—

Q. Did you make any inquiry of the company or any of the officials upon what basis this determination was made?

A. No.

Q. You made no inquiry at all?

A. I probably discussed it with Mr. Davis.

Q. Did you or didn't you, Mr. Vaught? I just want to get the background for this.

A. No, we were able to determine it was arbitrary percentage.

Q. You were?

A. That is right.

Q. Why was it arbitrary?

A. The year 1930 might well show that it was in that the percentages for that year the company estimated 25 per cent of it should be capitalized and their estimate ran as high as 870 per cent; that is, the actual over the estimate. There was a variation there of 25 per cent and as to this 870 per cent—

Q. What was the 870 per cent?

A. It is shown under the year 1930, Page 3.

Mr. Lange: It was general traveling expenses?

The Witness: The fourth item, the year 1930. They estimated a general traveling expense for the year amounting to $1500; it actually amounted to only $25.80.

By Mr. McCreery:

Q. What does that prove?

A. Well, it proves that they were a little off on their estimate.

Q. The estimate being made in advance?

A. That is true.

Q. Let's start with 1929 and find out why that is arbitrary, then we will go to 1930. Let's eliminate entirely 1930 and get back to 1929. You have thrown out, as I understand it, the $2519.74 for the year 1929. Will you state to me why that was an arbitrary amount to capitalize on any evidence you have before you?

A. It was the lack of evidence on the company's books that showed it was arbitrary.

Q. You are aware of the fact, Mr. Vaught, that the burden in a rate case is upon you to establish as arbitrary any company entry and that the presumption as declared by your own Commission is that until the contrary is shown all of the entries will be considered as fair and reasonable?

Mr. Lange: I object to that, Mr. Examiner. That is purely a legal conclusion. First of all, it is unfair to ask this witness, and it wouldn't be proper to ask him what that presumption would be.

The Trial Examiner: Objection sustained.

Mr. McCreery: Before it is sustained, Mr. Examiner, may I suggest that this exhibit and the statement are both founded in legal determinations and that seems to be involved in all of these auditing exhibits. In other words, there has to be a basis upon which he proceeds. He had just stated he proceeded on this basis because there was no evidence in this particular voucher to satisfy him in the absence of evidence and in the absence of inquiry he has thrown the matter out. That must be on some kind of an assumption that is it up to the company in a case of this kind to make proof of anything that any Examiner may determine he wants to question.

The Trial Examiner: That matter, however, Mr. McCreery, is a matter that is to be determined by the Commission itself.

Mr. McCreery: I appreciate that, Mr. Examiner, but I am trying to find the basis upon which this item is made as it is in this exhibit. I have no doubt that before we get through we will be discussing principles of accounting from the exhibits already offered in this case, so it doesn't appear to me that they can be dis-associated from certain fundamental bases of procedure and I think that is involved here.

The Trial Examiner: I think, however, the ruling of the Examiner will stand.

Mr. McCreery: I will save an exception.

The Trial Examiner: Very well.

By Mr. McCreery:

Q. Did you have any evidence of any kind that this allocation in 1929 was arbitrary?

A. Well, I think the information shown here on Page 3 of the exhibit shows it to be arbitrary.

Q. It shows by the statement of the 1929 capitalization it was arbitrary?

A. I think it does.

Q. That is all the evidence you have, if that is evidence?

A. There was no evidence as to whether or not these expenses were applicable—

Q. You made no inquiry with respect to that?

A. As to whether or not they were applicable?

Q. Yes.

A. Oh, we made inquiry in that we tried from the records of the company to determine whether or not—through time tickets—

Q. I asked if you made—

Mr. Lange: Did he finish his statement?

Mr. McCreery: Pardon me.

The Witness: —as to whether we made any specific inquiry, I can't say that we did.

Mr. Lange: May I be permitted to ask a question?

Mr. McCreery: Yes.

Mr. Lange: Did you make any inquiry, or any of the staff make inquiry, with reference to supporting time records?

The Witness: Yes, we did that.

Mr. Lange: What information, if any, were you given, or what reply was made to you?

The Witness: They had no time tickets.

Mr. Lange: They said they had none?

The Witness: They had none.

Mr. Lange: And that was in reply to your request?

The Witness: That is correct.

Mr. Lange: When you referred to time tickets, you referred to those items on Page 3, Exhibit 199?

The Witness: Those items that would come under the payroll charges.

By Mr. McCreery:

Q. Did you make inquiry as to whether there were time sheets kept with respect to the Vice President and General Manager?

A. That is true, yes, sir.

Q. Did you make inquiry with respect to the Secretaries, Clerks, and Stenographers?

A. Yes.

Q. And of whom did you make those inquiries?

A. I don't recall at this time. It was probably Mr. Hurdle or Mr. Davis.

Q. Can you recall?

A. As to being specific, I don't believe I can.

Q. And did you make inquiry as to whether the legal fee of $100 by whoever charged reflected a proportion or not?

A. Well, the company had no information on any of this item.

Q. I asked you if you made inquiry on this, Mr. Vaught.

A. Yes.

Q. Of whom?

A. Probably either of Mr. Davis or Mr. Hurdle.

Q. You made no inquiry of the lawyer who furnished the services?

A. No, sir.

Q. Now, did you make any inquiry about these general traveling expenses?

A. We examined the voucher and the voucher did not show that they were applicable.

Q. That was the end of your inquiry in that respect?

A. That is correct. That is the nature of the inquiry on all of these items.

Q. Did you make inquiry with respect to the office supplies? Of course, obviously, you wouldn't seek time sheets there.

A. That is correct.

Q. Did you make inquiry or just examine the vouchers?

A. Examined the vouchers.

Q. That's all. With respect to the general office rent your examination was limited to observation of the vouchers?

A. That is correct.

Q. Did you consider whether or not the executives of the company may have considered carefully what was a proportion of these things that should be charged to this account and had made an equitable—given an equitable proportion on the basis of that actual determination? Did you make any inquiries about that?

A. Not as to that, no.

Q. You didn't make any inquiry as to that?

A. No. In other words, the company in 1929—that is, the management of the company, had exercised a choice—when they charged the item to expense at first; then they come along a year later and make a transfer to capital account. In other words, they were reaccounting for items that they expensed in 1929.

Mr. Lange: Who made the transfer at that time?

The Witness: The company auditors.

Mr. Lange: What company?

The Witness: Henry L. Doherty & Company.

By Mr. McCreery:

Q. Mr. Vaught, frequently in finally closing a company's accounts, those accounts are closed at the time of the general audit, immediately after the close of the year, are they not?

A. That is true.

Q. That is a common practice with all companies, is it not?

A. Yes.

Q. And whatever was done in this respect was done immediately after the close of the year, upon the final determination by the auditor of the entries to be made, is that not true?

A. That is true, yes.

Q. And the entries were made in 1930, not in 1940, isn't that true?

A. That is true, that's right.

Q. Long prior to the passage of the Natural Gas Act or the promulgation of the system of accounts of the Federal Power Commission in relation to natural gas companies?

A. That is true, yes.

Q. And in connection with the final closing of the books by the company in the usual practice of companies?

A. This was in May of 1930.

Q. That was the first auditing after the close of the year, was it not?

A. That is true, but Colorado-Wyoming—they close their books every month and—

Q. They have an annual—

A. I don't think they made an error.

Q. I am asking you a question of fact and then you can express your opinion.

Mr. Lange: I don't believe he had quite finished.

Mr. McCreery: Pardon me.

The Witness: And in my opinion; that is, before such an entry can be made there should be documentary evidence to show that the error was made, if an error was made in charging these items to expense when they should have been charged to capital.

By Mr. McCreery:

Q. Now, isn't this true, that this tabulation at the bottom of Page 3 was an estimate made right at the close of 1930 and prior—1929, and prior to 1930 and for the year 1930, that estimate at the bottom of the page—was made prior to the year 1930, at the end of 1929, was it not?

A. I think this was made about May 1930.

Q. So the estimate for 1930 was made in May 1930?

A. That is right.

Q. That is the time you think it was made?

A. Yes.

Q. So that the estimate to work out a final charge for 1930 was made early in the year for which it was made?

A. About May I think.

Q. Now, on what authority, Mr. Vaught, did you feel justified in making these changes?

A. I think on the authority of good accounting practice, and then, too, the system of accounts.

Q. Well, now, let's find out which you are relying on. Are you relying on the system of accounts of the Federal Power Commission in this connection?

A. Not necessarily, no.

Q. I asked you whether you are.

A. Not necessarily.

Q. Are you or not?

A. Not necessarily. I think both apply.

Q. Now, just answer the question. You can either answer yes or no.

A. Both the system of accounts and good accounting practice are my reasons.

Q. So in part, then, you relied on the system of accounts?

A. I think so.

Q. Well, now, let's make up your mind, Mr. Vaught.

A. I relied on both.

Q. All right, that's what I was asking. Now, what general accounting practices have been violated in these entries?

A. Well, getting back to the fact of this arbitrary percentage of an estimated amount—

Q. Just a minute. Let's go back to your accounting practice first. You are assuming that it is arbitrary to prove that it is arbitrary. Now, I want to know on what basis you determined it is arbitrary.

A. The lack of any documentary evidence to show otherwise.

Q. Did you search for any documentary evidence aside from what was in the voucher?

A. That's all that was available.

Q. Did you ask for any other?

A. I believe I told you that we did.

Q. You said you asked for time sheets.

A. We did.

Q. Did you ask for anything else?

A. Time sheets, stores issues.

Q. You are sure you made these inquiries, are you?

A. I am.

Q. Have you any notation in your working papers about that?

A. No, I think it was discussed at the time, probably with Mr. Davis and Mr. Hurdle and a search was made for the time sheets.

Q. You think so?

A. I know so.

Q. And you made no reference to it in your working papers as a basis for your reversing of these entries?

A. I don't recall that I did. I might have. I don't recall that I did. I can check and see.

Q. Have you got working papers on it?

A. I think this is pretty well a working paper on this.

Q. Do you have any working papers?

A. No.

Q. This is all there is?

A. Yes.

Q. Did you make these entries under anybody's direction?

A. All the entries were made under the approval of Mr. Smith.

Q. I asked, did he tell you to make these entries? Did he give you directions as to what to do in this kind of a situation?

A. He probably told me to make some of them. I don't recall whether he told me specifically to make this one or not. He at least approved it.

Q. Now, going to your Entry No. 202 on Page 38, the adjustment for 5 per cent engineering fees, what was the basis on which you eliminated that?

A. I think on Page 4 it gives pretty well the reasons why the entry was made, and then on Page 4 of the written statement it says: "These fees are eliminated from plant investment because it is not clear that they represent the actual cost of services rendered or for that matter that service was ever actually rendered for them."

Q. Did you make any inquiry into that?

A. A letter was written to Mr. Davis requesting a detail of these charges as to their actual costs and was never furnished.

Q. Have you a copy of that letter?

A. I believe I do, yes.

Q. Will you produce that for me at your convenience?

A. All right.

Q. In connection with the plant account of Colorado-Wyoming Gas Company, after the elimination of the 5 per cent engineering, is there in connection with that entire account any entries, charges of any kind, covering designing and construction engineering in any amount?

A. I don't believe there is any shown as such.

Q. Did you find any?

A. I don't believe there is. I don't recall finding any, but the Doherty organization had some engineers out here and they were carried—no, they were paid a per diem—Colorado-Wyoming was billed per diem charges for these men during this construction period.

Q. After the whole designing plan had been worked out, is that not true?

A. I am not sure of that.

Q. As a matter of fact, whatever resident engineer there was, was there only after construction had started, is that not true?

A. No, I think they were—

Q. All right, get your figures.

Mr. Lange: Is there some detail of that on Page 84 of your Exhibit 199?

The Witness: Yes, Page 84, Exhibit 199, shows that there was total per diem charges for two of the H. L. Doherty & Company engineers, Mr. Burnham and Mr. Bussard, and I know in some instances that they were here during the preconstruction period; that is—

By Mr. McCreery:

Q. Did you understand, or is there any evidence that they had anything to do with design?

A. No, those charges came through the Doherty organization and usually just set forth—just billed them for services.

Q. As far as you know, then—

A. And would not describe what those services were.

Mr. Lange: You say did not?

The Witness: I don't believe they did, no.

By Mr. McCreery:

Q. As far as you know, there is in this plant account, then, no charge of any kind for design?

A. Before I would want to answer that, I would like to check to be sure.

Q. All right, but so far as you know now, that is true?

A. So far as I know right now, that is true.

Q. Subject to any correction, that is quite all right.

A. Yes.

Q. Did the Colorado-Wyoming Gas Company at any time have any purchasing department for the purchase of pipe and large supplies so far as you know?

A. Not so far as I know, no.

(Vol. 66, pp. 9522-9543.)

* * * * *

Q. Now, referring to Entry 203, upon what evidence did you eliminate the legal charges referred to in your Entry 203, summarized on Page 38 and as set out at Page 11 of your Exhibit 199?

A. Upon what evidence did I eliminate them?

Q. Yes.

A. I think you might say principally due to lack of evidence.

Q. Lack of evidence?

A. As shown by the voucher, to show that these items were proper charges to plant account.

Q. Did you ask for any detail?

A. I believe—yes, we asked for detail.

Q. Now, as a matter of fact, Mr. Vaught, on any occasion when you asked for detail on legal expenses, you got it, didn't you?

A. That is true, yes.

Q. Now, are you sure you asked for detail on this?

A. I would want to check to see.

Q. How would you check to see?

A. Correspondence—see if it was requested in detail.

Q. Will you check that, please?

A. Yes.

Q. And report back.

A. Yes.

Q. Mr. Vaught, at the time that these charges were made, the new and enlarged plant between Littleton and Fort Collins was in process of development and construction, was it not?

A. That is true, the main construction was during 1929, I believe.

Q. Those two years is when the whole plant from Fort Collins south to Littleton was projected and largely constructed?

A. What two years?

Q. 1929 and 1930.

A. I think the major charge here is for 1929.

Q. 1928, 1929 and 1930—three years.

A. I think 1929 and 1930, but I hardly think 1928 would be one of the years.

Q. You think it was not. Did you make any inquiry to determine that?

A. Other than to know the period during which construction was going on.

Q. Well, in the development of an enterprise from the point of view of the element of construction costs, does it originate on the day its actual construction starts? In other words, is there not always in an enterprise of this size some considerable preparation? We'll assume the construction started in March 1929. Isn't there normally a very substantial period of preparation before the beginning of actual construction on an enterprise of this kind?

A. I think that is usually true, yes.

Q. Now, did you make any inquiry into both the preliminary work in 1928 and the work in 1929, of the legal assistants of the company with respect to the development and construction of this part of the enterprise?

A. Not unless—that is, what might be shown in the correspondence file.

Q. Did you go into the correspondence file?

A. I am talking of the request that was probably made of the detail of these services.

Q. What do you mean, "probably made"? Do you think you made one?

A. I want to check first, yes.

Q. Did you go into the correspondence file?

A. Of Colorado-Wyoming?

Q. Yes, with respect to this matter.

A. I don't recall that we did, no.

Q. You would recall it if there was a very substantial file covering this particular matter, wouldn't you?

A. Not necessarily, no.

Q. You might even forget that?

A. No, I don't think I would forget it.

Q. Then you would recall it if you had examined such a file?

A. That is right.

Q. Did you examine their files in respect to the acquisition of rights of way of various kinds for a distance of a hundred miles?

A. I examined many of the rights of way themselves and information as shown by vouchers, and on the rights of way themselves it indicated that most of the rights of way, I be-

lieve, were secured—well, generally by employes of the company; that is, Mr. Thackrey and Mr. Shortess.

Q. And how did you so determine, Mr. Vaught?

A. From the vouchers themselves, which showed the approval of—

Q. They were approved by these officers?

A. No, when the right of way payment was made, they were usually made on a petty cash voucher by one of these—

Q. What does that prove? Does that prove that the title and the contract and so on had not been prepared and considered and examined by legal counsel?

A. No.

Q. Not at all, does it?

A. No.

Q. Did you find a large number of extensive contracts dealing with rights of way over ditches, public highways, railroads and other interests of that kind, or did you look for those?

A. Oh, there were a few of those.

Q. A few of them?

A. A few of them.

Q. What do you mean by a few?

A. Oh, I don't know exactly how many, but there were a few of these ditch companies.

Q. A few ditch companies?

A. Yes. I don't recall how many, though, to be exact.

Q. None of these facts that we have just been discussing here entered into your consideration of this entry, did they?

A. Well, in the absence of detail as to—

Q. Just answer my question first.

A. Yes, they entered into it.

Q. Now, how much did they enter into it?

A. In other words, the information was not made available to us as to—

Q. You just stated they entered into this. Now, I want to know how and to what extent they entered into your consideration of the matters covered by your Entry 203.

A. To the extent that we were interested in knowing the detail behind the voucher as to the—

Q. What detail did you see and what detail did you get?

A. Only as shown here in the entry.

Q. And as a matter of fact, according to your entry, you

had no information whatever and threw it out. That's what your entry says.

A. That's true. In other words, the largest item is $7500 and the information as shown on the voucher itself states: "Professional Services for 1928 and 1929."

Q. That's all you relied on?

A. I wouldn't say it is all.

Q. You say it is. I am just asking you whether it is or not. I can only take your statement.

A. I know that we attempted to get information regarding the detail.

Q. What information did you attempt to get?

A. The services actually performed in order to determine whether or not they were applicable to the plant account.

Q. And to whom did you go for that information?

A. The company.

Q. Who in the company?

A. That is one of the things I asked you to let me check.

Q. And whether you had written a letter to that effect?

A. That is true. That's correct.

Q. Isn't it true, Mr. Vaught, that any information in the company's files whenever you wanted anything, it has been available to you, has it not, in all of your exhibits?

A. That is right.

Q. So that whatever information that was there was available to you, was it not?

A. That is true, yes.

Q. All right, now, what did you do? Did you seek to find out anything about the problems in connection with construction and development of this scheme in 1928 and 1929 or not?

A. No, we attempted to, as I told you before, to get the detail behind the vouchers, and in the absence of any detail we were unable to determine that it was a proper charge to capital account.

Q. You are saying here that you attempted to get the detail back of these vouchers.

A. That is true, and we did get the detail back of some of these vouchers. I think you furnished it on one or two or three of yours.

Q. On 1938 and 1939, at the request of the Commission. There has been no request ever came for anything else.

The Trial Examiner: You say 1938 and 1939?

Mr. McCreery: Yes, 1938 and 1939. This is 1928 and 1929. I think that Mr. Smith will agree that all the information that has been requested, that we have tried to supply it. Isn't that true in that respect?

Mr. Smith: Are you speaking of Lee, Shaw and McCreery?

Mr. McCreery: Yes.

Mr. Smith: I think that is correct.

Mr. McCreery: That is the reason I am inquiring.

The Witness: Well, this is all the information that was available to us.

By Mr. McCreery:

Q. It was?

A. I believe that is true. However, that is subject to check, which I want to make on it.

Q. You want to determine whether or not you wrote a letter asking for it?

A. Yes.

Q. And you will report back whether or not you did, and if you have it you will produce the letter?

A. Yes.

Q. Now, under what authority do you proceed in disallowing these items under the circumstances which you have indicated you disallowed them?

A. I think it would be strictly accounting—

Q. How's that?

A. Strictly accounting—on good accounting principles, and lack of any evidence to show that it was applicable as a proper charge to plant account.

Q. And it is good accounting practice not to make the effort to find out? Is that good accounting practice to you, Mr. Vaught?

A. No, I don't think so, but I think an attempt was made to determine—

Q. But you are going to produce anything that you have. All right. You have stated that you are going to look for the letter and, of course, any request that was made, it would have been made in writing as in the case of others, would it not?

A. That is true—you say any request?

Q. With respect to these items for the detail.

A. Oh, we were over there in person. We could have made a verbal request. That is very possible.

Q. You say you don't know anything about it as to whether you have a letter. Now, if you have a letter, you produce the letter.

A. Yes.

Q. Isn't it a fact, Mr. Vaught, that in your checking not only of this company but in your auditing experience before, you have encountered very very many instances where the particular voucher may not show the detail. Is that not true?

A. That is true.

Q. And is it your invariable practice in such cases in all of your auditing to say, "Out goes the account"?

A. No, the question here is whether or not it is chargeable—whether it should be an item—

Q. I understand that, but you have thrown it out of the account to which it was charged and you say it was expense instead of capital. Now, you have done that on the basis of the fact that the voucher itself did not contain a lot of detail. Now, invariably when you don't find detail on the voucher, do you throw it out or transfer it from capital to expense or in whatever way you want to deal with it?

A. I think the usual practice is to try to determine the extent; that is, the reason for the expenditure and try to get it in its proper place.

Q. That's right. Now, what you propose to do with this on the showing that you say is made—you threw it just into expense.

A. It is being transferred to expense, yes.

Q. Now, is there any more justification for allowing it as an expense item than as a capital account item? What's the difference in accounting?

A. Well, if it is not a proper charge to capital, then it must be an expense item. It is unquestionable.

Q. How is that?

A. If it is not a proper charge to capital, then it has to be an expense item.

Q. What is your assumption on that?

A. I don't believe I have made any.

Q. You have made none?

A. That's true.

Q. Now, the fact that the management happened to be on the job at this particular time and allowed the account under the circumstances as capital account, does that carry any weight with you?

A. Read that, please.

(The question referred to was read by the reporter, as set forth above.)

The Witness: No, I think that they were in error in charging it to capital account.

By Mr. McCreery:

Q. Now, the judgment of the management at the time, then, carries no weight with you?

A. Not if that judgment were in error, no.

Q. You are assuming something here. You haven't got any evidence. There is no evidence, you say, to show one way or the other, and I asked you if you would give any weight whatever to the determination of management and then you assume instantly that it is in error and, therefore, say they should not, but you are in the position of undertaking to determine whether it is an error. You haven't got that determined yet.

A. I think the lack of information as to show the charge is a proper capital charge is enough to say they were in error on it.

Q. So you give it no weight at all, the determination of management at that time as compared to your determination in 1941?

A. No.

Q. That's right. All right.

The Trial Examiner: We will stand in recess for five minutes.

(At this point a short recess was taken, after which proceedings were resumed as follows:

The Trial Examiner: The hearing will be in order.

By Mr. McCreery:

(Vol. 66, pp. 9543-9555.)

* * * * *

Q. For the purposes of this rate hearing, then, you undertook to set up the complete plant account?

A. We took the plant account as per books at December 31, 1939, and certain adjustments and arrived at the schedules shown in the exhibit.

Q. Then what did you show in your Exhibit 199 to be the Colorado-Wyoming Gas Company investment in gas plant as of December 31, 1939 under your adjustments?

A. Well, I would like to refer you to Page 36 of the Uniform System of Accounts.

Q. Well, just a moment.

A. This is in explanation of the amount that is shown in the total gas plant.

Q. Supposing you answer the question and then give your explanation.

A. The total gas plant is shown as per books, December 31, 1939, to be $1,860,551.93.

Now, referring to Page 36—

Q. What does that show as adjusted?

A. As adjusted, $1,756,193.58.

Q. Now, do you wish to make a further explanation by reference to the Uniform System of Accounts?

Mr. Lange: Before we get away from that, that's at Page 37 of your Exhibit 199?

The Witness: That is correct.

Now, referring to Page 36 of the Uniform System of Accounts under "Instruction 1. Purpose of Gas Plant Accounts," Paragraph A, which says: "The summary gas plant accounts are as follows:" and it includes under the Paragraph A, Account 100, "Gas Plant," and also Account 107, "Gas Plant Adjustments." So the total gas plant as

shown on Page 37 of Exhibit 199 conforms to Paragraph A of Instruction 1.

By Mr. McCreery:

Q. Now, in that adjusted figure as you have adjusted it to $1,756,193.58, is there in that figure any going concern value?

Mr. Lange: Well, that going concern value—

Mr. McCreery: Just a minute. I have a right to ask that question.

Mr. Lange: Well, that going concern value is purely a legal conclusion. It may cover a lot of things and it may not. You might define what you mean by that.

By Mr. McCreery:

Q. Have you covered anything in your figure except the bare bones, physical property, and the capitalized overhead in relation thereto?

A. No, we have included only what we have determined to be original cost.

Q. Bare bones?

A. That's right.

Q. Did you have any instructions either to consider or not to consider going concern value in the preparation of Exhibit 199?

Mr. Lange: Well, I still urge the objection.

Mr. McCreery: I asked him if he had received any instructions.

Mr. Lange: I urge counsel to define what he means by going concern value.

Mr. McCreery: I asked him if he got instructions.

The Witness: None that I remember, no.

(Vol. 66, pp. 9874-9876.)

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Investment in Gas Plant, per books and as adjusted by the witness, as of December 31, 1939, was $1,860,551.93 and $1,665,031.36, respectively, a net difference and reduction of $195,520.57 by the witness. (Ex. 199, p. 37.)

It is unnecessary to consider in this connection the reclassification entries of the witness. The entries made by him which constitute eliminations from the Plant Account are identified as Entries 200 to 223, inclusive, except Entries Nos. 209, 220 and 221 which are reclassification entries. The several elimination entries will be separately considered in this record.

The character of the study and exhibit (199) of the witness Vaught is further described by him, as follows:

"Q. Have you covered anything in your figure except the bare bones, physical property, and the capitalized overhead in relation thereto?

"A. No, we have included only what we have determined to be original cost.

"Q. Bare bones?

"A. That's right."

(Vol. 68, pp. 9875, 9876.)

* * * * *

"Q. Now, the fact that the management happed to be on the job at this particular time and allowed the account under the circumstances as capital account, does that carry any weight with you?

* * * * *

"A. Not if that judgment were in error, no.

"Q. You are assuming something here. You haven't got any evidence. There is no evidence, you say, to show one way or the other, and I asked you if you would give any weight to the determination of management and then you assume instantly that it is in error and, therefore, say they should not, but you are in the position of undertaking to determine whether it is an error. You haven't got that determined yet.

"A. I think the lack of information as to show the charge is enough to say they were in error on it.

"Q. So you give it no weight at all, the determination of management at that time as compared to your determination in 1941?

"A. No."

(Vol. 66, p. 9554.)

With respect to *Entry No. 200, Exhibit 199,* "Interest on Excess Capacity," testimony on cross-examination was as follows:

"Q. Refer to page 38 of your exhibit. I notice Entry No. 200 refers to elimination of interest on excess capacity.

"A. That is right.

"Q. In considering that column, did you consider at the time that in the years 1928 and 1929 and 1930 the available gas supply of the Colorado-Wyoming Gas Company as it was then derived from the Wellington field of the Continental Oil Company was in process of rapid exhaustion?

"A. No, I didn't investigate that.

"Q. You didn't consider that?

"A. No.

"Q. Did you consider the fact that there had been developed in the Colorado-Wyoming system as it existed prior to the construction of the line from Fort Collins to Littleton a demand of approximately a million, six hundred thousand Mcf. annually?

"A. No.

"Q. You gave no thought to that?

"A. No.

"Q. Did you know that there had been and was actually developed a load and service aggregating that or substantially that amount in Fort Collins and in the Cheyenne area?

"A. No.

"Q. You did not have that in mind?

"A. I didn't consider it.

"Q. Did you have in mind the occasion for construction of the line from Fort Collins to Littleton to connect with the Colorado Interstate line at that point? Do you know why it was done?

"A. Yes.

"Q. Why was that?

"A. It was to deliver Texas gas north to Fort Collins.

"Q. And why was it necessary to deliver the Texas gas to Fort Collins and the Cheyenne area?

"A. My understanding was that it was caused by the depleted conditions of the Wellington field.

"Q. The Wellington field was rapidly depleting?

"A. That is right.

* * * * *

"Q. Did you have in mind that as between the years 1929 and 1930 and again as between the years 1930 and 1931 the very substantial decrease from year to year in those two years of the supply of gas from the Wellington field? Was that in your mind in considering this?

"A. No, it wasn't.

* * * * *

"Q. Do you know whether as a matter of fact that the supply of gas from the Wellington field rapidly depleted in those years and the new line from Fort Collins to Littleton was put into service to take up the difference between the dwindling supply and the existing demand in the Fort Collins and Cheyenne Area?

"A. That would necessarily follow.

"Q. Did you have it in mind in your consideration of this account?

"A. No, I did not.

"Q. I notice on page 4 you refer to the interest on excess capacity; on page 3 is an unusual item, and then on page 4 you make this statement:

" 'These charges, made after construction of the company's plant was complete and in operation, were based upon a portion of the cost of property south of Fort Collins, Colorado, whose capacity was in excess of that required to handle the volume of business actually done;'

* * * * *

"Q. * * * The Fort Collins-Cheyenne load in the approximate amount I have given, which is for the purpose of this question, was not a load to be developed but was at that time an existing load?

"A. It was, yes.

"Q. And it is not true that at this particular time what had been the original system of the Colorado-Wyoming Gas Company was completely changed and what was in effect a brand new system constructed and placed in operation on the completion of the connection with Colorado Interstate Gas Company at Littleton and the connection at Fort Collins with the old system on the north?

"A. Well, it was a development, yes. I wouldn't say it was entirely a new system.

"Q. It was fundamentally different, was it not?

"A. It was, yes.

"Q. Did those matters enter into any consideration on your part in considering this Entry No. 200?

"A. No."

(Vol. 66, pp 9522-9527.)

Company Exhibit No. 245 (Appendix this Record).

J. L. WILLARD, rate and valuation engineer, in rebuttal to the foregoing testimony of Commission witness Vaught, testified for Colorado-Wyoming Company.

Exhibit 245 (see Appendix) prepared by the witness was described by him as follows:

"A. Exhibit 245 is entitled 'Revised Exhibit No. 111, Plant; Revised Exhibit No. 115, Earnings; Revised Exhibit No. 117, Plant "Sales for Resale"; Revised Exhibit No. 117, Earnings "Sales for Resale"; Revised Exhibit No. 118, Plant "Sales for Resale--Cheyenne"; Revised Exhibit No. 118, Earnings "Sales for Resale—Cheyenne", Years 1939-1945'.

* * * * *

"This exhibit contains revised data previously submitted in Exhibits No. 111, 115, 117 and 118.

"The tabulations herein have been computed in the identical manner and method as in the original exhibits. They are presented only for the purpose of reflecting the effect of certain eliminations from the original figures and are not to be construed as a recognition that the eliminations are justified. Net additions to investment between September 30, 1940, and December 31, 1940, are also included.

"The eliminations reflected in revised Statements Nos. 1 and 2 of Exhibit 111 are as follows:

"(1) Engineering charge of 5 per cent in the amount of $82,792.57 has been deducted from the various accounts affected. (Ex. 199, Entry 202.)

"(2) Account 1021 has been credited with $51,887.25 which is the difference between the total interest capitalized on non-utilized facilities $79,362.52 and the amount of interest calculated in Exhibit No. 244, to-wit: $27,475.27. (Ex-199, Entry 200.)

"(3) Account 1013 has been credited with $2,844.90 'cash discount' as described in Entry No. 204 of Exhibit No. 199.

"(4) Account 1014 has been charged with an amount of $3,278.54. This amount is the net result of Entries 213, 214 and 215, and 216 of Exhibit No. 199.

"(5) Account 1014 has been credited $2,111.24. This amount is reflected as a part of Entry 218 of Exhibit 199.

"(6) Account 1014 has been credited $1,001.31. This amount is described in Entry No. 219 of Exhibit 199.

"The revisions to Exhibits 115, 117 and 118 reflect a redistribution of total investment as revised in Exhibit 111, to plant applicable to 'Total Sales for Resale' and 'Sales for Resale at Cheyenne.'"

(Vol. 83, pp. 12,440-12,442.)

The foregoing revisions of and eliminations from Statements Nos. 1 and 2, Exhibit 111, reflected in Exhibit 245, modify and revise "Plant Applicable to Sales for Resale" (Exhibit 117) and "Plant Applicable to Sales for Resale, Cheyenne, Wyoming" (Exhibit 118) and also were used in "Net Return" (Exhibit 248).

(For Exhibits 111, 117, 118, 245 and 248, see Appendix.)

(Vol. 83, p. 12,442; Vol. 84, pp. 12,668, 12,669.)

J. L. WILLARD, recalled as a witness by and on behalf of the Respondents, having been previously duly sworn, was examined and further testified as follows:

Cross Examination.

By Mr. Lange:

Q. Mr. Willard, referring to your Exhibit 245, you made the statement when you presented this exhibit on direct examination that it was prepared and submitted with the

reservation that you state in the written statement that it has a limited purpose only, is that correct?

A. Yes, that is correct. It is just to reflect for the benefit of the Commission the effect of certain controversial items in the allocation of those items to the classifications previously submitted on total sales for resale and sales for resale at Cheyenne.

Mr. McCreery: And plant account, as well?

The Witness: That is correct. That is reflected all the way through in those classifications.

By Mr. Lange:

Q. In other words, the revisions—or rather the tabulations that are set up in this Exhibit 245 revise or modify those previously set up by you and Mr. Hancock in Exhibits 111, 115, 117 and 118?

A. That is correct.

Q. And the major revisions are those set out and enumerated in the statement of the exhibits on pages one and two of Exhibit 245? All of them are set forth?

A. All of them.

Q. And the first set forth there; that is, the engineering fee of 5 percent, totalling $82,792.57 is the same that appears in Commission's Exhibit 199, pages 85 to 86.

A. That is correct.

Q. Do you have Commission's Exhibit 199 there?

A. Yes.

Q. That is at page 86 of the Exhibit 199, and it relates to the entry No. 202 in Exhibit 199.

A. Yes, sir, that is correct.

Q. In other words, it is set forth in entry 202 at page 4, and then again the description of it appears at page 86 of the Exhibit 199, *colume* 3.

A. Yes, sir.

Q. $82,792.57.

A. Yes.

Q. So you have revised your exhibit first of all to that extent.

A. Yes, sir.

Q. And then in the next item is the account 1021. That is the item of the total of $79,362.52 that covers the item of excess capacity that had been set up in your Exhibit 111

and included in account 1021, "General Construction Expenditures" of $91,619.13.

A. It is a part of that total, yes, sir.

Q. And you are revising that to the extent of leaving only the sum of $27,475.27 to be capitalized as previously described in your Exhibit 244. You are still capitalizing $27,475.27 there, aren't you?

A. I am still including in this recomputation of these allocations an amount of $27,475.27.

Q. It in effect reduces—well, it directly reduces the total of $79,362.52 to this $27,475.27 in this revision?

A. In this revision.

Q. For this purpose as you stated.

A. That is correct.

Q. And as I say, you had previously in your Exhibit 244 discussed the method that you pursued, didn't you?

A. Yes, sir.

Q. On that particular item.

A. Yes, sir. However, in Exhibit 244 I did not cover necessarily all of the properties that could have been covered in that calculation. For instance Arvada Compressor Station was somewhat in the same category as was the 6 inch line to Greeley.

Q. That's right, and you tie in this figure, the total of $79,362.52—that affects entry No. 200 at page one of the Commission's Exhibit 199.

A. That's correct.

Q. That is the same item.

A. Yes.

Q. Now the next, No. 3, is the one in account 1013, and you refer to the entry number in Commission's exhibit on that one as well as on No. 4?

A. Yes, sir.

Q. Also No. 5 and No. 6.

A. Yes, sir.

Q. And the next items aren't in any numbered paragraph, but you have them cross referenced to the particular entries in the Commission's exhibit, haven't you?

A. The two entries affecting expense are indicated in the written statement on page two as being entries Nos. 100 and 101 of Exhibit No. 202.

Q. Yes, that is right. Oh, yes, now your comment on

the following page on Exhibit 227. Exactly what is your purpose in setting that up, Mr. Willard?

A. My purpose in setting that up is merely to show the amount of investment mainly in the percentage of the total investment of the plant that Mr. Lyon has assigned to direct industrial customers in order to calculate his total service cost for that direct industrial sales.

Q. Which of these figures on this comment page are taken from Mr. Lyon's testimony or exhibit?

A. The figures on that page are all computations from the figures in Mr. Lyon's exhibit, and I can follow each one of them through from his initial figure to these figures if you so desire.

Mr. McCreery: May I make this suggestion, if it would save time: that we would be very glad to simply put in the record the computation, if you like.

Mr. Lange: Yes.

Mr. McCreery: That would save time.

Mr. Lange: That's all right.

Mr. McCreery: We can do that.

The Witness: I have furnished that to the Commission's engineers.

Mr. McCreery: The engineers and accountants have already seen the working papers, but if it will save time we can put it in the record.

Mr. Lange: And let it be Exhibit 245-A.

Mr. McCreery: All right.

The Trial Examiner: I don't believe it is adequately described for the purposes of the record.

Mr. Lange: It is a computation prepared by Mr. Willard.

Mr. McCreery: That explains the whole procedure by which those figures were arrived at.

Mr. Lange: I suppose it would be a computation prepared by Mr. Willard in re: Exhibit 227.

Mr. McCreery: Mr. Willard and Mr. Jorgensen, and we will put it in as 245-A. That will be put in tomorrow or the next day and copies furnished.

The Trial Examiner: It will be marked for identification, then, as Exhibit 245-A.

(Exhibit 245-A, Witness Willard, marked for identification.)

By Mr. Lange:

Q. Now, the next page, present value, as indicated by you, is present value as of December 31, 1941, isn't it?

A. That is correct, including tangibles.

Q. Is that what you intend it to be?

A. Yes, and by present value in this instance I mean the depreciated value of the physical property that now comprises the system together with the expenditures contemplated during the year 1941 on the Arapahoe Compressor Station, and including working capital.

Q. Working capital is the estimated figure?

A. That is correct.

Q. As well as the 1941 additions; they are also estimated?

A. Yes, they are estimated on a budget requesting an expenditure.

Q. I mean they aren't actual.

A. That is correct.

Q. Now, as I understand it from your written statement you have given effect to these several changes as set forth on pages one and two of your Exhibit 245 in the schedules that follow, is that correct—in the same exhibit?

Mr. McCreery: As set forth on the cover.

The Witness: Yes. The revised statement 1, and statement 2 of Exhibit 111 affect in the main the investment listed for revised Exhibit No. 117 and revised Exhibit No. 118. The only way in which they are reflected in the earnings statement of revised Exhibit 117 and 118, and together with revised Exhibit 115 is in a calculation of income tax.

Mr. McCreery: And the two specific items mentioned on page 2 of the statement.

The Witness: Yes, sir.

By Mr. Lange:

Q. And also, I don't believe in your revised Exhibit 117

you had previously amortized any regulatory expense, had you?

A. That is true. This amortization of regulatory expense is an additional calculation of the original exhibit.

Mr. McCreery: It is put in both ways.

By Mr. Lange:

Q. The same is applicable to the Exhibit 118; that is, to revised Exhibit 118, that also has the amortization prosion that is not in Exhibit 118.

A. That applies to revised Exhibit 115, 117 and 118 on the earnings statement.

Mr. McCreery: Well, those figures, for the record, come from Exhibit 242, the Table there set forth entitled, "Breakdown of General Expense" which is Mr. Davis' exhibit.

Mr. Lange: I believe that is all on that exhibit.

(Vol. 85, pp. 12831-12839.)

* * * * *

Company Exhibit 244 (Appendix this Record).

Witness *Willard* presented Exhibit 244 entitled "Interest on Non-Utilized Facilities to Provide Essential Substitute Gas Supply to Original Fort Collins-Cheyenne System" (see Appendix), which deals directly with Entry 200, Exhibit 200.

In this exhibit, interest on non-utilized facilities was set at $27,475.27 by the witness.

The witness pointed out with respect to the elimination entry (No. 200) "Interest on Excess Capacity" that:

> "This adjustment reflects the fact that Mr. Vaught did not consider the history of the construction, operation and expansion of the Colorado-Wyoming Gas Company's present system. These elements were considered and controlled the management, at the time, in capitalizing the item in question.
>
> "The original facilities including all investment from Fort Collins north to and including Cheyenne, Wyoming,

were constructed in 1925 and 1926, and were supplied with gas from the Wellington field north of Fort Collins. In 1929 the supply from this field was rapidly diminishing and was known to be approaching exhaustion; and new construction was necessary from Littleton to Fort Collins to take the place of such diminishing supply if the Fort Collins-Cheyenne system was to be saved and continue useful. It was, of course, good judgment to install at the outset a line of sufficient size and character to meet fully the then requirements of such original system and facilities for utilization upon the complete exhaustion of the Wellington field gas supply rather than to construct smaller lines at much greater expense, sufficient to meet the requirements from year to year during the process of depletion. Such construction from Littleton to Fort Collins was at that time projected, constructed and dedicated to the original system to the extent necessary to meet and carry the then existing requirements thereof.

"The annual purchases of gas in Mcf. by the company during the years 1928 to 1932, inclusive, were as follows:

"1928:	Continental Oil Company	2,254,599
	Colorado Interstate Gas Co.	.....
	Myer Goodstein	.....
"1929:	Continental Oil Company	1,718,642
	Colorado Interstate Gas Co.	33,943
	Myer Goodstein	.....
"1930:	Continental Oil Company	1,275,030
	Colorado Interstate Gas Co.	888,112
	Myer Goodstein	57,618
"1931:	Continental Oil Company	453,955
	Colorado Interstate Gas Co.	1,800,153
	Myer Goodstein	77,284
"1932:	Continental Oil Co.	163,078
	Colorado Interstate Gas Co.	2,112,038
	Myer Goodstein	100,839"

The witness continued by stating that Exhibit 244 is for the purpose of illustrating and applying the principle involved in such capitalization. The construction of the line as a 10-inch and 8-inch line resulted in an expenditure for

facilities that could not be utilized until required by the progressive depletion of the Wellington Field. Due to this progressive depletion it was necessary to supply the demand of the north part of the system until the Wellington Field was depleted. The witness continued:

"Based on the foregoing facts, and deliveries of the system on December 26, 1938, the investment in the main 10-inch and 8-inch lines from Littleton to Fort Collins in this exhibit, has been allocated proportionately to the original system and facilities of the company from Fort Collins to Cheyenne, Wyoming.

"From the deliveries on that day it has been determined that the original facilities of the north system required approximately 63.6 per cent of the investment in the 10-inch line and 84.9 per cent of the investment in the 8-inch line.

"The requirements of the original facilities of the north system for Texas gas on that day were 8818 Mcf. at a pressure base of 12.9 pounds, although the daily maximum requirement of the north system in 1928, substantially exceeded the above amount.

"The actual maximum daily deliveries of Texas gas to the original facilities have been recorded from February 1930 through December 1932. As each successive new maximum daily delivery was made that proportion of the required investment went into service in the ratio the actual deliveries bore to the total ultimate requirement. Interest has been computed on the balance of investment in the non-utilized facilities during the several periods, through the year 1932. The result of the several calculations indicate total interest of $27,475.27.

"It is my opinion that this is a minimum amount of interest to be assigned to the main 10-inch and 8-inch lines, in connection with such construction to provide essential substitute gas supply to the original Fort Collins-Cheyenne system."

(Vol. 83, pp. 12,436-12,439.)

On cross-examination *Willard* testified that the item of $79,362.52, capitalized on the books of the Company, was

part of Account 1021 in Exhibit 111, (shown in breakdown thereof, Exhibit 146) (Vol. 84, p. 12,599) and according to the principles adopted by the officers of the Company, the witness believes that it was properly capitalized. (Vol. 84, p. 12,598.) He stated that the calculation in Exhibit 244 was to show the principle adopted by the Company in making the total charge. The amount computed by him in Exhibit 244 was used in Exhibit 245, for the reason that the $79,362.52 amount was a controversial item, and the use of the $27,475.27 figure computed by him in Exhibit 244 was to show the effect of the allocation of this amount of money in "Total sales for resale" and "Sales for resale at Cheyenne." The witness further stated, "It is not necessarily superseding the previous charge in the new exhibit with the idea of this being the correct amount. It is just to show to the Commission the effect of controversial items in those allocations." (Vol. 84, pp. 12,598-12,599.)

The witness was asked if, under his method of computation, a lateral was constructed to an industrial plant off the main line and full capacity of the lateral was not used for several years, then under the principle in Exhibit 244 would interest on excess capacity be charged during the intervening period.

The answer was:

"No, because the line went into service and under the ordinary sense of service it is in full service. This proposition with the 8 and 10-inch line was somewhat different than that, in that it was necessary to construct this line, as I have stated in the written statement accompanying this exhibit, in lieu of the diminishing supply at the Wellington Field. The Wellington Field served the entire north system for a period of several years, and when it was known that that supply was depleting, it was necessary to construct facilities to supply that part of the demand in the north system which could not be supplied by the Wellington Field, and rather than construct small lines from time to time to meet the then need of the north system, when the entire 8 and 10-inch line, was constructed. It is for that reason that the larger capacity was built at one time, but did not go into service, as I

see it, until the depletion of the Wellington Field was more or less complete."

(Vol. 84, pp. 12,600, 12,601.)

He further stated the industrial main line lateral in the supposed case would be definitely merely "idle plant." (Vol. 84, p. 12,605.)

The peak demand of the north system used in the exhibit was 8818 M. c. f. (the 1938 peak), although the peak demands of the north sysem in 1928 were substantially higher, and had that demand been used it would have resulted in a longer interest computation. In the situation here involved, the term "non-utilized facilities" relates to the actual advance construction for the use of Fort Collins and Cheyenne when the Wellington Field supply became exhausted. With respect to how he would proceed and for how long a period he would compute interest he replied, "I stopped when I felt that the Wellington Field as far as being useful in meeting the peak requirements of the north system was eliminated." In this case the capacity and facilities actually constructed and later used for that particular use, were not utilized for the period of three years that interest was computed in Exhibit 244. (Vol. 84, pp. 12,603-12,606.) The gas supply from the Wellington Field was negligible from 1932. (Vol. 84, p. 12,601.)

The item of interest on excess capacity was capitalized on the Company's books about April or May, 1930, for 10 months in 1930, 1931 and 1932. The entry was made after the completion of the construction work on the Arapahoe-Fort Collins main pipeline. (Vol. 84, p. 12,608.)

Work Order No. 126, dated November 17, 1931, was handed the witness by Counsel for the Commission, which read as follows:

"In accordance with practice established in 1930 under recommendation of the New York auditing department, interest at 6 per cent per annum will be charged on the value (at cost) of excess or unused capacity of pipe line and compressor stations of recent construction."

The witness replied he had seen it and believed that the entry was made pursuant to this work order. (Vol. 84, p. 12,609.)

Q. Now in your Exhibit 244, I believe you made a preliminary statement on direct examination that you have some limited purpose in presenting this exhibit, or what was that? I didn't quite recall what your statement was.

A. I think the statement was to the effect that this exhibit was made with the idea of showing the principle involved in calculating the interest item of $79,000 which is now on the books of the company.

Q. Now, that particular item is the item that you had set up in your Exhibit 111 as interest on excess capacity?

A. I had it set up in Account 1021.

Q. And your Exhibit 111?

A. Yes, it is a part of Account 1021 in Exhibit 111.

The Trial Examiner: And at that time you took the position that the whole $79,362.52 was properly capitalized by the company and included in the plant account?

The Witness: According to the principles adopted by the officers of the company. I think it was properly capitalized.

By Mr. Lange:

Q. Now, what is your purpose at this time of setting up only $27,475.27 in lieu of or instead of $79,362.52?

A. Do you mean in calculating that $27,000?

Q. Yes.

A. My idea in making this calculation in this exhibit was to show the principle that must have been adopted by the officers of the company in making their total charge of $79,000. I did not reach the $79,000 on this particular calculation.

Q. No, but is this calculation where you reach the result of $27,475.27 intended to modify or change the position you took in connection with your Exhibit 111 where you set up the $79,000 as properly capitalized on excess capacity?

A. Not necessarily in total, Mr. Lange. This exhibit, as I said, was calculated to show the principle. I have used this figure in a subsequent exhibit, 245, for the reason that I believe that it is a controversial item and it is the inclusion in Exhibit 245 of the amount that is calculated here. The reason for the inclusion of the $27,000 in that exhibit in lieu of the $79,000 which is in the original 111 exhibit is only to show the effect of the allocation of this

amount of money in "Total sales for resale" and "Sales for resale at Cheyenne." It is not necessarily superseding the previous charge in the new exhibit with the idea of this being the correct amount. It is just to show to the Commission the effect of controversial items in those allocations.

Q. In other words, that $79,362.52 is the same that was included in Account 1021, General Construction Expenses, totaling $91,619.13 in Exhibit 111?

A. That is correct, in the original Exhibit 111.

Q. Yes, appearing on Statement No. 3 of that exhibit, Page 8. Where else does that appear in your Exhibit 111?

A. Just a moment. I can check that figure that you have given. The total of that interest on non-utilized facilities included in Exhibit 111 is $79,362.52.

Q. That's right.

A. That appears on Page 9 of Statement 3 of Exhibit 111 under Account 1021, General Construction Expenditures.

Q. Yes.

A. And is a part of the total $91,619.13 comprising the whole of that account.

Q. That's right. Now, Mr. Willard, in following through on this computation or this method utilized by you in computing interest, which you term "excess capacity," supposing you had a lateral serving an industrial off your main line and that lateral may be several hundred feet or may be several miles in length, and as the industrial begins using that gas the lateral is actually in service. Isn't that right?

A. That is correct.

Q. And it may be a good many years before that industrial utilizes the entire capacity of that lateral, isn't it?

A. That is correct.

Q. You would be charging interest on excess capacity during that entire period?

A. No, I would not do that.

Q. Why not?

A. Because the line went into service and under the ordinary sense of service it is in full service. This proposition with the 8- and 10-inch line was somewhat different than that, in that it was necessary to construct this line, as I have stated in the written statement accompanying this exhibit, in lieu of the diminishing supply at the Wellington field. The Wellington field served the entire north sys-

tem for a period of several years, and when it was known that that supply was depleting, it was necessary to construct facilities to supply the part of the demand in the north system which could not be supplied by the Wellington field, and rather than construct small lines from time to time to meet the then need of the north system, the entire 8- and 10-inch line was constructed, it is for that reason that the larger capacity was built at one time, but did not go into service, as I see it, until the depletion of the Wellington field was more or less complete.

Q. And what year was that?

A. At the end of 1932.

Q. Well, how long did they continue to get the gas from the Wellington field after that?

A. They got it in very small quantities for several years. I could get that for you exact.

Q. Wasn't it up to about 1936 or 1937?

A. Yes, in 1937 they got 331 M cubic feet of gas from the Wellington field out of a total usage of 3,095,802 M cubic feet, which is about—well, it is such a fraction of one per cent that I can't very well figure it—about one-thousanth of one per cent of the total requirements.

Q. Well, the company had quite a number of customers attached to the south end of this line before the Wellington field was depleted, didn't they?

A. Yes, they had customers attached as construction was completed up to the particular localities they were to serve.

Q. And this substitution of the then intersection for the 8-inch section refers to, in this Valmont matter, that substitution which would of course require a change in design not originally contemplated?

A. Probably true, but as to cost, the difference in cost between an 8-inch and a 10-inch line from the Arvada station to the Boulder Junction would be very very small.

Q. Well, what do you mean by very very small, Mr. Willard?

A. I would judge somewhere around a thousand dollars per mile.

Mr. McCreery: And how many miles is that, approximately?

The Witness: I don't believe I have anything to check that on right now. I would venture an opinion.

Mr. McCreery: Of course, as a matter of fact, the entire capacity was utilized there in any event for whatever purpose it was constructed and it did not affect the portion of the Fort Collins requirements in any event, did it?

The Witness: It had no effect on the Fort Collins requirements.

Mr. McCreery: And that is an existing and known demand which this line was built to satisfy.

The Witness: That is correct, and I have not used in this Exhibit 244 a requirement of the north system that was as high as it had already used in the past, and it appears to me that in using the method I have taking this peak which was obtained in 1938, such peak being below previous requirements of the north system. I have adopted the conservative viewpoint.

Mr. McCreery: And the peak demand in 1938 was substantially higher than the peak that you have used as a measuring rod, is that not true?

The Witness: The peak in 1928?

Mr. McCreery: 1928, yes.

The Witness: Were higher than I have used.

By Mr. Lange:

Q. In this exhibit you again utilized the 1938 peak, didn't you?

A. That is correct.

Q. Now, I notice that in your exhibit on the page following Page 3 of the written statement, you phrase this as follows:

"Interest on non-utilized facilities."

What do you mean by "non-utilized"?

A. Non-utilized facilities are those facilities that did not go into service due to the demand on the line being lesser than the actual demand designed was.

Mr. McCreery: In its construction it was contemplated to use it for Fort Collins as the Wellington field supply became exhausted, was it not?

The Witness: That is correct.

Mr. McCreery: And that is what you mean by that phrase in relation to this situation?

The Witness: That's right, sir.

By Mr. Lange:

Q. All right, then, if you had ten years from the time of the beginning of service of the line before what you term the capacity of the line had been reached, how would you proceed with reference to your computation of interest?

A. I wouldn't proceed for ten years.

Q. You wouldn't?

A. No.

Q. Where does it stop?

A. I stopped when I felt that the Wellington field as far as being useful in meeting the peak requirements of the north system was eliminated.

Mr. McCreery: As a matter of fact, the peak demand in 1928 was in excess of the 8818 that you use and if you use the actual peak demand of that system as of 1928 you would result in a larger interest computation than you have here, would it not?

The Witness: That is correct.

By Mr. Lange:

Q. And what was the year that the Colorado Portland Cement Co. took its biggest load?

A. I believe that was in 1928.

Q. And going back to my original hypothetical problem, you say that if you had a main line industrial that was served off the lateral and that it took a good many years for that industrial to use the amount of gas that would be up to the capacity of that lateral, that would be a different situation?

A. Yes, sir, that would be definitely what you are terming idle plant.

Mr. McCreery: 1928 was the peak for the Colorado Portland Cement.

By Mr. Lange:

Q. And in such a situation you wouldn't have this interest on excess capacity applicable?

A. No, I don't think in that instance it is a proper charge.

Q. Mr. Willard, there isn't any question raised by you, but that these facilities of the company were completed and in service? There wasn't any more construction work to be done, was there?

A. No. The facilities were being utilized, but as I have said before, a portion of this main line was not utilized until this Wellington field was depleted. It was in those facilities that I calculated weren't utilized during this period of three years that interest has been calculated.

Q. That is, when you used the term "non-utilized," you mean the proportionate part of the line?

A. That is correct.

Q. There was gas actually flowing through the line to certain metering points?

A. Very definitely. This shows that in the month of February 1930 there was a peak of 4,171 Mcf. that went through that line.

Q. Now, turning to Exhibit 199, do you have it there?

A. I believe so.

Q. Mr. Vaught's Entry No. 200, page 1.

A. Yes, sir.

Q. You will notice that there are calculations for the years 1930, 1931 and 1932?

A. Yes, sir.

Q. As to the company's income as adjusted, and for each of those years. Have you checked those?

A. No, I haven't checked over his income statement.

Q. You haven't taken those into consideration?

A. No, sir.

Q. In your calculations at all?

A. No, sir.

Q. Nor the return that the company was earning at that time?

Mr. McCreery: Well, now, that's another matter.

Mr. Lange: As set out in this Page 1.

Mr. McCreery: As set out in this report.

Mr. Lange: Yes.

Mr. McCreery: That is another story.

By Mr. Lange:

Q. As set out on this page.

A. As I said, I have made no actual check of the income statement myself. However, I have no reason to believe of the method of computation by Mr. Vaught that there is anything wrong with this tabulation on the bottom of Page 1.

Mr. McCreery: On his premises?

The Witness: On his method, yes. I can't say that I agree with the methods.

Mr. Lange: Well, there may be a mutual disagreement between yours and ours.

Q. You say, I believe you stated in your cross examination that you had made no effort to determine what earnings the company had during those years.

A. No, sir, I wasn't concerned with earnings. I was trying to find the cost as reflected on the books of the company for the existing physical property.

Q. And did not endeavor to relate the company's net earnings during that period?

A. That would have meant nothing to me.

Q. For those periods, rather. I believe in our cross examination on Exhibit 111, the matter was gone into as to when this interest on excess capacity was set up on the company's books. Did I interrogate you about that at that time?

A. Yes, you questioned me about that, Mr. Lange, but just in what form I can't recall. As to the actual dates it was set up on the company's books, it was for the years —for ten months in 1930, the calendar years of 1931 and 1932.

Q. And do you recall when it was actually set up on the company's books?

A. If I am not mistaken, the first charge on the company books was sometime around April or May 1930.

Q. What was the occasion?

A. I am not sure of that.

Q. Do you know what the occasion was for setting it up?

A. Well, the occasion no doubt was to set up an interest

charge which the officers of the company deemed proper and advisable for the lack of use of facilities that were constructed in prior years.

Q. There is no question but that the—it was done long after the construction period had ended?

A. I don't think it was very long after, no.

Q. It was after the construction had ended?

A. Yes, and no doubt the interval may have arisen due to consultation and study as to just how to treat the matter.

Q. Mr. Willard, I have here a copy of notes on work orders. I wonder if you know about the work order No. 126 of November 17, 1931, which says, "In accordance with practice established in 1930 under recommendation of the New York auditing department, interest at 6 per cent per annum will be charged on the value (at cost) of excess or unused capacity of pipe line and compressor stations of recent construction."

A. Yes, I believe I have seen that.

Q. It was pursuant to that work order that this entry was made?

A. Yes. That was no doubt instructions from the New York office after general consultation with local company officers.

(Vol. 84, pp. 12597-12609.)

* * * * *

In *Entry 201, Exhibit 199,* the witness *Vaught* undertook to eliminate certain amounts of overhead expenses for the years 1929 and 1930, capitalized by the Company in connection with the then current construction of the Arapahoe Station-Fort Collins main line, sundry main line laterals, compressor stations and other facilities, as follows: $2,159.74 for 1929 and $3,195.00 for 1930, being 25% and 21.2% of spectively, of general overhead expenses for those years.

The reason assigned by the witness was:

"To eliminate amounts capitalized by the company representing arbitrary percentages of general expenses for 1929 and 1930. The attached schedule is a detail of the company's computation. It will be noted that the amount of $2,519.74 capitalized for the year 1929 represents an

arbitrary 25% of the accounts indicated. The amount of $3,195.00 capitalized for 1930 respresents various arbitrary percentages of estimated or assumed amounts for general expenses for 1930. The estimates which were used in computing the amount of $3,195.00 varied considerably from the actual amount of such expenses for 1930, as disclosed in the company's computation."

(Exhibit 199, pp. 2, 3.)

On cross-examination, *Vaught*, when asked to state why the capitalization was "arbitrary," answered variously: "It was the lack of evidence on the Company's books that shewed it was arbitrary" (Vol. 66, p. 9530); "there was no evidence as to whether or not these expenses were applicable" (Vol. 66, p. 9532); "as to whether we made any specific inquiry, I can't say that we did" (Vol. 66, p. 9533); "they (the Company) had no time tickets" (Vol. 66, p. 9533); as to legal fees ($100.00) no inquiry was made of the lawyer who furnished the services (Vol. 66, p. 9534); as to traveling expense "we examined the voucher and the voucher did not show that they were applicable" (Vol. 66, p. 9534); as to office supplies and rent, witness looked at the vouchers, but that was the end of his inquiry. (Vol. 66, p. 9535.)

He was then interrogated and answered as follows:

"Q. Did you consider whether or not the executives of the company may have considered carefully what was a proportion of these things that should be charged to this account and had made an equitable—given an equitable proportion on the basis of that actual determination? Did you make any inquiries about that?

"A. Not as to that, no.

"Q. You didn't make any inquiry as to that?

"A. No. In other words, the company in 1929—that is, the management of the company, had exercised a choice when they charged the item to expense at first; then they come along a year later and make a transfer to capital account. In other words, they were reaccounting for items that they expended in 1929.

* * * * *

"Q. Mr. Vaught, frequently in finally closing a company's accounts, those accounts are closed at the time of the general audit, immediately after the close of the year, are they not?

"A. That is true.

"Q. That is a common practice with all companies, is it not?

"A. Yes.

"Q. And whatever was done in this respect was done immediately after the close of the year, upon the final determination by the auditor of the entries to be made, is that not true?

"A. That is true, yes.

"Q. And the entries were made in 1930, not in 1940, isn't that true?

"A. That is true, that's right.

"Q. Long prior to the passage of the Natural Gas Act or the promulgation of the system of accounts of the Federal Power Commission in relation to natural gas companies?

"A. That is true, yes.

"Q. And in connection with the final closing of the books by the company in the usual practice of companies?

"A. This was in May of 1930.

"Q. That was the first auditing after the close of the year, was it not?

"A. That is true. . . .

. . . . . .

"Q. So the estimate for 1930 was made in May 1930?

"A. That is right.

. . . . . .

"Q. Now, on what authority, Mr. Vaught, did you feel justified in making these changes?

"A. I think on the authority of good accounting practice, and then, too, the system of accounts."

(Vol. 66, pp. 9535-9538.)

H. P. DAVIS, Secretary of the Company, testified on the subject in rebuttal:

"In Entry No. 201, page 2 of Exhibit No. 199, Mr. Vaught reclassifies General Overhead Expenses capital-

ized for 1929 and 1930 at that time. To support this reclassification, the witness stated without proof or demonstration that the allocations made by the company were arbitrary. No inquiry was made by him of the company officers, with respect to the entries in question.

"The construction of pipe lines amounting to approximately $1,500,000.00 involved a considerable amount of the time and facilities of the general office. No time records were kept during the construction period of the actual time devoted by management or by the clerical force, however, two new office employees were added in 1929 due to the press of work caused by construction activities. Neither the time of these employees nor others was charged to construction direct. Likewise none of the general office expense such as rent, telephone, stationery etc., was directly charged to construction. However, the question of the capitalization of a fraction of these items was not finally determined until early in 1930, at the time of the year-end audit when a study was made of the work involved up to the end of 1929. This study showed that a minimum of 25% of our major office and management costs should be allocated to construction, and charges based on that proportion were accordingly set up for 1929. For 1930, in which year there remained approximately as much construction work as in 1929, the same percentage was considered applicable. This percentage was applied to estimated expenses for 1930 and a monthly accrual set up. Mr. Vaught's analysis, (page 3, Exhibit 199) reflects that the actual expenses for the year 1930 amounted to $15,076.85 instead of the $13,380.00 estimate used by us in arriving at the monthly charge. While the actual items making up total expenses varied from the estimate, the aggregate was approximately $1700.00 greater than the estimate. We accordingly would have been entitled to apply our determined basis of 25% to this excess. We did not do this, however, but allowed the original charge to stand so that our 1930 accruals were actually 21.2% of the total instead of 25%. The total amounts so capitalized for 1929 and 1930 are $5714.74, and are entirely proper. See, page 42, paragraph (6) Overhead Construction Costs, Instruc-

tions—Gas Plant Accounts, Uniform System of Accounts, Natural Gas Companies, January 1, 1940, Federal Power Commission."

(Vol. 83, pp. 12,421-12,423.)

In *Entry 202, Exhibit 199,* the witness *Vaught* recommends for elimination all engineering fees paid to Henry L. Doherty & Co., under Management Contract of August 1, 1929 (Exhibit 106) in connection with construction in the years 1926 to 1937, inclusive, but chiefly in the years 1926, 1929 and 1930, in the amount of $82,792.57.

The reason therefor was the "affiliate" relationship between Colorado-Wyoming Company, Henry L. Doherty & Co., and Cities Service Company.

The statement of the witness *Vaught* is as follows:

"To adjust for 5% engineering fee on construction paid to H. L. Doherty and Company and Cities Service Company.

"A detail of 5% engineering fees capitalized is shown in the attached schedule. The total of such fees capitalized, according to the schedule, is $83,886.65. The balance in plant account as of December 3, 1939 is $82,792.57, the difference of $1,094.08 representing fees included in property retirements as recorded on the company's books.

"Payments of engineering fees have been made in accordance with the provisions of a fiscal agent agreement dated September 1, 1929 between Colorado-Wyoming Gas Company and Henry L. Doherty and Company. The terms and conditions of this contract are indicated to be the same as had been in effect between the parties prior to the date of the contract. A copy of the contract is attached.

"The books of account of the Colorado-Wyoming Gas Company and other data made available to the Examiner do not contain evidence that these fees represent any actual cost of the services from which the amount was paid."

(Exhibit 199, p. 4.)

The witness *Willard*, for the Company, eliminated these engineering charges in Exhibit 245 (above referred to), which revises Property Accounts as originally set forth in Exhibits 111, 117, 118. The elimination is also reflected in "Net Return" (Exhibit 248). See Appendix.

(Vol. 83, pp. 12,440-12,442.)

With the elimination of the 5% engineering charges the plant account of Colorado-Wyoming Company shows no charges or payments whatever for design and construction engineering. (Vol. 66, pp. 9541-9543.)

"On rebuttal, H. P. Davis, Secretary of the Company, testified as follows:"

"Included in entry No. 203, page 11, Exhibit 199 are miscellaneous expense items totaling $750.00 capitalized by the company but arbitrarily reclassified by Mr. Vaught. He charges these to expense on the ground that the vouchers from which the charges were made did not contain necessary supporting information. Mr. Vaught made no request for details supporting the entries as made by the company.

"Item No. 1 is a charge of $250.00 originating on our voucher No. 1454, covering expense of Mr. D. C. McCreery on trip to Kansas City May 5th, 1929. The purpose of this trip was to confer with some of our officials, who were at that time in Kansas City, regarding certain legal matters pertaining to construction work then in progress, and to discuss some of the details of the proposed terms of contract being prepared for the purchase of gas from Colorado Interstate Gas Company.

"Items No. 2, 3 and 4 are charges totaling $500.00 originating on our vouchers No. 1742, 1825 and 1923, covering reimbursement to Lee, Shaw & McCreery for payments made by them to Wm. I. Reilly in October, November and December, 1929 for special services in regard to pipe line work. During the latter part of 1929, persistent reports came to us of threats being made by persons in the Louisville-Lafayette district to blow up our pipe lines which at that time were in course of construction

through the heart of the coal mining area north of Denver. Officials of the company deemed it highly advisable to investigate these threats and accordingly the services of Mr. Reilly were engaged for this purpose. He was retained for a period of approximately ten weeks, during which time a close watch was kept over the pipe lines passing through this area. He also mingled with the various groups in this area from which trouble might be expected to arise in the effort to forestall any plots which might be in the making. About the middle of November 1929, construction having progressed to the stage where our lines were in the ditch and covered, and the agitation referred to having subsided, the services of Mr. Reilly were discontinued. This expenditure was a necessary and proper construction charge and properly capitalized. Entry No. 203 therefore is without justification. See, page 40, paragraph (8) Components of Construction Cost, Instructions Gas Plant Accounts, Uniform System of Accounts, Natural Gas Companies, January 1, 1940 Federal Power Commission."

(Vol. 83, pp. 12,419-12,421.)

By *Entry 204, Exhibit 199*, there was eliminated from Plant Account $2,844.90 "representing cash discount realized and retained by Cities Service Company on invoices (Note: aggregating $181,153.20) paid by it for the account of Colorado-Wyoming Gas Company in 1926," and further "that it represents capitalization of an inter-company profit on the books of Respondent."

The position of the Company as stated in letter to the witness *Vaught* was: "Their position (Cities Service Company) in the matter was that any reward for the prompt payment of bills in no way affected the price of goods covered by the invoice. Since the money was supplied by Cities Service Company, it was deemed proper that they should receive the benefits of any cash discounts." (Ex. 199, pp. 12, 13.)

However, this item was eliminated by the Company witness *Willard* in Exhibit 245, Revising Property Accounts as originally set forth in Exhibits 111, 117, 118, and was not reflected in "Net Return." (Exhibit 248.)

(Vol. 83, pp. 12,440-12,442.)

The witness *Vaught* in *Entries 205 and 206, Exhibit 199*, reverses and eliminates "Interest during Construction" as charged on the Company's books in the amount of $23,718.50, and sets up "interest during construction as recommended by the Examiner" in the amount of $14,978.74. (Ex. 199, p. 15.)

Vaught, on cross-examination, however, admitted an error in his computation of $1,165.78, which made the final determination by him $16,144.52, a net reduction of $7,573.98.

(Vol. 66, pp. 9596-9598; Vol. 68, pp. 9867, 9868.)

Interest during construction relates to the years 1925 to 1937, inclusive, except the years 1932 and 1933. The witness (Ex. 199, p. 16) sets forth a detailed schedule of computation, including "date to which interest re-computed by Examiner" as to various sections of main and lateral lines and compressor stations. The differences in result between *Vaught* and the Company are reflected in the rebuttal evidence in connection with Exhibit 243, given by Company witness WILLARD, the substance of which is as follows:

"The calculations in entry No. 206 arbitrarily assume that a main line goes into full service, at the time service starts from a branch from that main line. The fallacy of this method can be pointed out by a hypothetical example. Assume a 20 inch line 200 miles in length was to be constructed, and a 4 inch lateral serving a small community at the half way point, was a part of the project. The theory used by Mr. Vaught would include interest during construction on the entire first 100 miles of 20" construction when the 4" line went into service. This obviously is harsh, inequitable and unfair.

"The calculations in this exhibit eliminate from interest charges the proportionate part of the investment in the main 10" and 8" lines from Littleton to Fort Collins as service begins on various laterals, prior to the date of connection and initial service of the 10" and 8" lines, to the already existing facilities of the north system at Fort Collins.

"Computations in the attached exhibit have been made

for interest during construction on the main 10" line from Littleton to Boulder Junction and the main 8" line from Boulder Junction to Fort Collins to the date of service to the north system at Fort Collins, January 31, 1930.

"To the amounts computed for these lines has been added the additional amount of $7614.58 which was obtained from Exhibit 199. This amount consists of the total of all interest during construction charges in entry 206 of that exhibit with the exception of the computations on the 10 inch and 8 inch line from Littleton to Fort Collins.

"The total interest during construction thus computed results in the total amount of $23,690.27. The actual book figure is $23,718.50. It is believed that the total actual book charges should be allowed and that Entries number 205 and 206 of Exhibit 199 be disregarded."

Q. Now turning to your Exhibit 242, Mr. Davis, Page—it doesn't have a page number on it. It is included in Entry 203, Page 11.

A. All right.

Q. Does your copy of the exhibit have a number on it?

A. No, it doesn't. This statement was made up in sections and wasn't properly numbered.

Mr. McCreery: It is actually the fourth page of the exhibit.

By Mr. Lange:

Q. You there refer to Entry No. 203 of the Commission's Exhibit 199 as to the miscellaneous expense item totaling $750 capitalized by the company but which you state arbitrarily is reclassified by Mr. Vaught. What do you mean by that statement, Mr. Davis?

A. I mean there was nothing there by which I could do other than leave it where it was unless it was arbitrary.

Q. Well, you mean that if any change in classification was made, any reclassification was made, it would automatically be arbitrary?

A. I would say so in the absence of anything to prove the original classification was wrong.

Q. There again you state Mr. Vaught made no request for any details supporting these entries. How did you know—

If another request was made on you, how did you know whether he made any requests of others for information?

A. Well, I would say that if he made requests from others he didn't go far enough with his request. He should have come to me.

Q. What about Mr. Hurdle? Wasn't there a lot of information given by him in response to requests of Commission's staff?

A. He undoubtedly made an effort to supply all of the information he could, but I am sure in something like this he couldn't have taken it upon himself to supply information not available to him.

Q. What is Mr. Hurdle's status?

A. He is my assistant. He is now the Treasurer of the company.

Q. If Mr. Vaught or anyone else on the Commission's staff had made a request for any information on that particular item of someone else, you don't attempt to say here such request was not made?

A. No, I wouldn't say that he hadn't asked someone. He might have gone out and asked the janitor, for all I know, but he didn't ask me.

Q. He didn't ask you?

A. If he had, I would have tried to obtain the information.

Q. But all requests for information were not directed to you by the Commission's staff, were they?

A. No, and as I said before, all of us answered as many questions as we could orally, and questions that we couldn't answer we could obtain the details on, we did do that then or later. I can't find that Mr. Vaught ever requested any information regarding these items.

Q. Turn to Page 2, Exhibit 242. It is marked "2" but it has on it as the second paragraph "Entry No. 201".

A. All right.

Q. On Page 2 of Exhibit 199 you there refer to reclassification of general overhead expenses capitalized for 1929 and 1930. You state further: "To support this reclassifi-

cation, the witness stated without proof or demonstration that the allocations made by the company were arbitrary."

Now, there again you state the conclusion that those reclassifications by Mr. Vaught were arbitrary?

A. No, I didn't say he was arbitrary.

Q. I mean you.

A. He states we were.

Q. You mean you state that because the company reclassified them they should not be considered as arbitrary?

A. Mr. Vaught stated that the company's classification was arbitrary.

Q. What is your position with reference to Mr. Vaught taking that position?

A. He brings out nothing to demonstrate it was arbitrary on our part. That is what I meant to say.

Q. As I understand it, you are not accusing Mr. Vaught of being arbitrary?

A. He is accusing us.

Q. It is on the other foot at this time?

A. That is right.

Mr. McCreery: He stated on his cross examination it was arbitrary, Mr. Lange.

By Mr. Lange:

Q. Now, going to Page 3, Exhibit 199—

Mr. McCreery: Please state the following page instead of referring to it as Page 3.

Mr. Lange: I have reference to Exhibit 199.

Mr. McCreery: I beg your pardon.

By Mr. Lange:

Q. Does Page 3, Exhibit 199, truly reflect what appeared on the company's books?

A. I believe it does.

Q. How did the company proceed in setting that up?

A. Just as stated there, that a study was made of the volume of work and the result of that study showed a minimum of 25 per cent of our general office activities were devoted to construction.

Q. Who made that study?

A. The traveling auditor. I am trying to think of his name.

Q. Mr. Taylor?

A. No, it doesn't seem like it was him. I really can't say now.

Q. What year was it made?

A. 1930.

Q. 1930?

A. Yes.

Q. What part of the year?

A. It was mid-year or a little later.

Mr. McCreery: May I interpose one question here?

Mr. Lange: Yes.

Mr. McCreery: This study was made by this traveling auditor and yourself?

The Witness: It was made by the traveling auditor and myself. It was a joint study.

By Mr. Lange:

Q. Was it prepared by you or the two of you together?

A. Largely by him with my assistance in giving him what information I could.

Q. Did you draft the report? Did you put it in final form before you determined the making of these entries?

A. I think we did, yes.

Q. What became of that study?

A. He probably presented it to his superior, the auditing *dividion* in New York City.

Q. You don't have it, do you?

A. No, I wouldn't have it.

Q. Didn't you participate in the preparation of it?

A. Yes, I assisted all I could and furnished him with the information he wouldn't ordinarily have from the records.

Q. And that study was furnished to Mr. Vaught?

A. Oh, no. Mr. Vaught didn't ask for it and it wasn't available had he asked for it.

Q. It wasn't available?

A. No.

Q. Of course, you knew it was pertinent, had it been available?

A. Well, I wouldn't say it was particularly pertinent.

Q. Why not?

A. It was a matter that had been studied and arrived at and adopted by the management as being proper.

Q. In other words, after these items had appeared on the company's books, later on it was determined after a study was made, that a definite change should be made that on its face would determine that such change was a correct one, and you wouldn't have to refer anybody to that study?

In other words, those items were on the company's books and at a later time a study was made, isn't that true?

A. Well—

Q. If it isn't, what are the facts?

A. Let me state it this way: While we were engaged in this construction work we were likewise operating the company. The same parties were participating in both activities. Naturally we were quite busy. We didn't attempt to keep a log book or a diary and a time sheet and what-not as we went along. We were busy with other things. After certain portions of this time had expired we sat down and reviewed the thing. Of course, our figures were largely from memory because as I say, we had nothing in writing.

Q. You state in the written statement: "No records were kept the time actually devoted by the management or the actual clerical force."

A. That is right.

Q. There wasn't any of that available? You and this auditor sat down in 1930 and decided on this study?

A. That is right.

Mr. McCreery: In 1930? It was in 1930 but the audit was for the year 1929?

Mr. Lange: That is right, but this study was made in 1930.

Q. At that time you and this company's auditor arrived at these percentages set forth on Page 3, Exhibit 199?

A. Yes.

Q. And you think that Mr. Vaught should not have criticised the percentages as set up by the company there as being arbitrary? What support did you give him for those percentages?

A. He asked for no support. I might say there would be no other method of arriving at a figure after the business was transacted without records to go on other than on a percentage basis.

Q. I will agree with you as there would have to be a percentage basis if you had no time records or anything, but that percentage may be anywhere from one to one hundred.

A. That is the way we analyzed it at that time and the percentage we arrived at as the result of our cogitations.

Q. Can you give just an index of how you arrived at 25 per cent of those items appearing at Page 3, Exhibit 199, for the year 1929? You have that whole group of items that you applied 25 per cent to.

A. Well, probably our study showed a minimum of 25 per cent of our activity was in connection with construction activity. We accordingly applied that percentage to the various general overheads there which were concerned.

Q. Did you have to get some basic starting point to make those apportionments or percentages? Having no time records or other data of that sort on which to predicate the figures, you had to do that, did you not?

A. I can't say now other than that we determined a minimum of 25 per cent of our activity was spent on construction work.

Mr. McCreery: That is, time spent in your office?

The Witness: Our general office was occupied no less than 25 per cent on construction.

By Mr. Lange:

Q. You just applied that round percentage to each of the items set forth there, salaries, legal fees, traveling expenses, office supplies, and rent? You applied 25 per cent as being applicable to every one of them?

A. I would say so, yes.

Q. The same percentage?

A. Yes. It was our overhead cost of conducting the office.

Mr. McCreery: This determination was made while the construction was actually in progress?

The Witness: While it was still under way.

By Mr. Lange:

Q. But the items that have been previously expensed on the company's books, had there been anything on the books at all to give you any guide?

A. I couldn't say that definitely.

Q. You just had to sit down and determine without any records the percentage that you determined to be applicable for each item to be capitalized?

A. No, not for each item.

Q. For those certain items set forth on Page 3 there?

A. We knew what our total general office overhead was and we determined the proportion of activity that the general office participated in the general construction work.

Q. What became of the necessary records that enabled you to make those percentage determinations? Did the company keep any records in those years?

A. No.

Q. You did not? Didn't they keep them in any place at all, either here or New York?

A. I wouldn't know.

The Trial Examiner: Mr. Davis, did you say the traveling auditor arrived at this figure at the time he was out here?

The Witness: Yes.

The Trial Examiner: You didn't capitalize it at that time?

The Witness: We set up an entry capitalizing $2,549.74 for 1929 and we adopted this same percentage to apply to 1930 as general overhead and accrued that over a month-to-month—on a monthly basis.

The Trial Examiner: It was set up following the conclusions reached by you and the traveling auditor?

The Witness: That is right. At the end of 1930 the actual general overhead amounted to a little more money than we had originally estimated and upon which we based our monthly accrual. We didn't go back and change our accrual to pick up that excess. We just allowed it to stand at the original amount.

By Mr. Lange:

Q. For the year 1930 you proceeded in making estimates both ways. First of all you estimated the expense items as set forth in that list and then you estimated the percentage. You had two estimates to make. First you estimated the amount and then you had to determine the percentage, isn't that true?

A. We applied the percentage we used previously.

Q. It was still an estimate. Here you had an estimate both as to amount, as well as to percentage in 1930?

A. That is true, but later results showed we were modest in our estimate rather than otherwise.

Q. You mean in the amount or in the percentage?

A. In the amount and percentage both.

Q. On the upper part of Page 3, Exhibit 199, I notice there are varying percentages that are based upon actual—it is 46.8 and 20.1 and 6.8 and 17.99, and even if you disregarded that extreme one on traveling expenses, the others are not at all—

Mr. McCreery: Those percentages are Mr. Vaught's, Mr. Lange. They are not the company's figures.

The Witness: He applied our actual accruals.

By Mr. Lange:

Q. That is the way it actually worked out?

A. That is the way it worked out. The amount we accrued was only 21.2 per cent of our total overhead expense.

Q. That is right. That is the total—

A. Whereas, we set out to capitalize 25 per cent of our overhead, so we really undercharged ourselves.

Q. On general traveling expense you set up 15 per cent in your estimate for 1930, didn't you?

A. Yes.

Q. But there isn't any question about it as to the year 1930, you have both estimates of the amounts as well as an estimate of it in percentage?

A. Yes.

Mr. McCreery: Isn't that the way you do in the current year, constantly make estimates and accruals from month to month based upon the expected expense to be incurred?

The Witness: That is right.

By Mr. Lange:

Q. I see you attempt to predicate your position on some provisions of the Uniform System of Accounts. I refer you to Page 42, Paragraph 6, construction costs. Will you turn to that, Mr. Davis?

A. Yes.

Q. You have turned to Paragraph 6, overhead construction cost?

A. Yes.

Q. Paragraph A refers to overhead construction cost, and so forth. Paragraph B states: "The instructions contained herein shall not be interpreted as permitting the addition to gas plant accounts of arbitrary percentages or amounts to cover assumed overhead costs, but as requiring the assignment to particular jobs and accounts of actual and reasonable overhead costs."

Is that the paragraph you cite?

A. I referred to Paragraph A.

Q. All right.

A. It gives you a little more *leaway* than Paragraph B does.

Q. Where does Paragraph A permit you to make any percentage calculations like you attempted to justify?

A. It doesn't mention percentage. It doesn't stipulate how you will arrive at it.

Mr. McCreery: Read the paragraph, Mr. Davis.

The Witness: "All overhead construction costs, such as engineering, supervision, general office salaries and expenses, construction engineering and supervision by others than the accounting utility, law expenses, insurance, injuries and damages, relief and pensions, taxes, and interest, shall be charged to particular jobs or units on the basis of the amounts of such overheads reasonably applicable thereto, to the end that each job or unit shall bear its equitable proportion of such costs and that the entire cost of the unit, both direct and overhead, shall be deducted from the gas plant accounts at the time the unit of property is retired."

That is what we set out to do.

Mr. McCreery: You don't base it on the Uniform System of Accounts but it is a recognized system of accounts followed by this company back in 1930?

The Witness: That is right.

By Mr. Lange:

Q. You don't believe in the second paragraph with reference to computing percentages?

Mr. McCreery: I think it is applicable that you are assuming it is an arbitrary percentage. The paragraph permits percentages but they shall not be applicable.

Mr. Lange: I wanted this witness' contention—

Mr. McCreery: I wanted to clear the record, as you were distorting the meaning of that paragraph.

Mr. Lange: I am just reading the paragraph as it is and the Commission will determine what it means.

Q. Is that what you are relying upon, Mr. Davis, this particular item that justifies the making of the percentages as you and this auditor made?

Mr. McCreery: It isn't the justification. It is an illustration. He doesn't say he used it as an authority, because this system was not in operation at the time these entries were made in 1930.

Mr. Lange: I want to know whether he believes that this section of the Uniform System of Accounts sanctions a proceeding as he has outlined it.

The Trial Examiner: Which section is that, Mr. Lange?

Mr. Lange: Section 6, any portion of it.

The Witness: I would say Paragraph A very clearly does.

By Mr. Lange:

Q. I read Paragraph B. There is another paragraph, Paragraph C. Are you in accord with Paragraph C of the same section? It states: "The records supporting the entries for overhead construction costs shall be so kept as to

show the total amount of each overhead for each year, the nature and amount of each overhead expenditure charged to each construction work order and to each gas plant account, and the bases of distribution of such costs."

A. I think we complied with that.

Q. You mean after you made—

A. I think our statement is outlined here and shows our bases.

Q. After you arrived at your own bases, you were satisfied with what you did?

A. Yes, we feel it is reasonable and fair.

The Trial Examiner: We will stand in recess until 2:00 o'clock this afternoon.

(Whereupon, at 12:30 o'clock, p. m., a recess was taken until 2:00 o'clock, p. m., of the same day.)

Afternoon Session, 2:00 P. M.

The Trial Examiner: The hearing will be in order.

Whereupon—H. P. Davis, the witness on the stand at the time of recess, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination (Continued).

By Mr. Lange:

Q. Mr. Davis, at the noon recess we were on Entry 201 of Exhibit 199 discussed by you at Pages 2 and 3 of your written statement, Exhibit 242, and request was made for a transfer voucher which we *watned* to have available at this hearing. Did you find that voucher, TV894?

A. Yes.

Q. Do you have that voucher?

A. I have a pencil copy here that was taken from it.

Q. Will you read that into the record? What does it show?

A. The explanation on it is, "Auditor's Adjustment Entry to correct distribution on vouchers Nos. 1309, $111.55; No. 1328, $25.10; No. 1350, $145.15; No. 1370, $101.72; No. 1421, $159.80. These amounts charged to general traveling expense should have been construction expense."

Q. And what do those items consist of?

A. What do you mean?

Q. These adjustments reflected by this transfer voucher. Do you have a breakdown of them?

A. No; there is no breakdown other than these voucher reference numbers which is redistributing a certain amount of traveling expenses through plant account.

Q. In what year were they expensed? What is the date of that?

A. The date of the transfer voucher is May 16, 1930.

Q. May 16, 1930?

A. Yes.

Q. When were those items expensed by the company?

A. They were quite likely 1929 because the audit period was as of December 31st.

Q. Now, turning to Exhibit 199, Page 3, the item "General Traveling Expenses for the year 1929," actual, in Column 2, $1285.32, doesn't that $1285.32 include these adjusted items?

A. Well, I couldn't say for sure but I don't believe it does

Q. They were originally charged to expense, weren't they?

A. Yes.

Q. Well, why?

A. Well, I presume that these were items which were definitely assignable to construction, while on this other the balance that we are allocating to construction—the balance of our general traveling expense—

Q. Well, isn't it a fact that the item of $1285.32, general traveling expenses, actual, 1929, is the total of those expenses for the year 1929 as per books?

A. I couldn't say. Mr. Vaught has them set out here. I presume he means them to be the total.

Q. You have had occasion to check those, aren't they in fact correct as presenting the actual expenses per books, general traveling expenses, for the year 1929?

A. Quite likely they are. I haven't checked it.

Q. And you still say that these adjusted items are not included in that total of $1285.32 that were expensed?

A. I wouldn't say.

Q. In other words, they amount to $535.32?

A. Well, I haven't checked them.

Q. If they were you would have a duplication to that extent, wouldn't you?

A. Well, I wouldn't say that it would necessarily be a duplication. This statement over Page 3 is allocating in a general way the total overhead expenses for the year exclusive of any item which may have been redistributed in some other manner.

Q. Well, there is no question but that the $1285.32 is all inclusive, includes the entire amounts?

A. It probably does.

Q. Well, if that is a fact, then there is bound to be duplications, of course. Then you apply this 25 per cent—this percentage of 25, to the total, don't you?

A. Yes. That is the way we have built up to get our total. We applied the 25 per cent really to the total general overhead, item by item.

Q. Now let's go to the next entry, Page 3. That is Entry No. 212, Exhibit 199, Page 22 of the exhibit. That covers a reclassification of cost of facilities installed to serve the International Metal Foundation. What is your criticism with reference to Mr. Vaught's treatment of that?

A. None, except that it was a little premature.

Q. Well, Mr. Vaught's treatment is as of December 31, 1939, isn't it?

A. I think that it is.

Q. Well at that time in the light of the knowledge of that date, he correctly treated it, didn't he?

A. That was the condition at the moment. Now, I am calling attention to a different condition which has come about.

Q. All right, but you don't say that his treatment at December 31, 1939 may not have been correct, but the conditions have changed, and you say it should now be voided in its entirety. Of course, you didn't pursue the matter correctly.

A. Well, what I meant to convey was that the condition now is that it should be plant in service.

Q. In other words, wasn't there a retirement made of that property as late as 1941?

A. You will notice here in my comments that our pipe line and measuring facilities are being placed in readiness

to commence service so that any retirements made are being restored—

Q. So that Mr. Vaught's entry as of December 31, 1939 reflected the correct situation but since that time there has been a change in actual conditions?

A. That's it. All I want to do now is to restore that to plant in service. He was correct at the moment.

Q. And what is the date that it goes back into service?

A. Well, most any time now. We are just waiting for the people who occupy the building to complete their piping and connect to our metering box.

Q. It hasn't actually been connected up?

A. No, they are working on it now, as fast as they can.

Q. And is that service to be rendered under a new contract?

A. Yes. It has been tendered to them. That is a formal contract subject to acceptance.

Q. It has not been closed yet?

A. It has not been officially signed, but they are going ahead and making the expenditure on their pipe, for piping the building there and buying appliances.

Mr. McCreery: The company also is making expenditures at the present time?

The Witness: Yes.

By Mr. Lange:

Q. Now, this entry—

The Trial Examiner: I wonder, Mr. Lange, on this item which you have just discussed, if we might not—if counsel might not agree to perhaps submit some information later as to when this line actually goes into service so that it might become part of the record in these proceedings.

Mr. McCreery: We'll be very glad to do that.

Mr. Lange: Yes.

The Trial Examiner: When the service is entered.

Mr. McCreery: Of course we are spending money now as the customer is, but you mean when the actual flow of gas starts?

The Trial Examiner: Yes.

Mr. Lange: When the gas is being served. I think a copy of such contract ought to accompany that statement, what contract is entered into.

Mr. McCreery: I don't know what the purpose of cluttering up this record with that contract is. The service is all we are interested in.

The Witness: The contract will no doubt be filed at Washington.

The Trial Examiner: The contract undoubtedly will be filed at Washington?

Mr. Lange: Except unless it is referred to by reference it won't be in the record.

Mr. McCreery: I don't see what place it has in the record. I have no objection except it clutters up the record.

Mr. Lange: We don't know the nature of the service and we ought to have the opportunity to determine it.

The Trial Examiner: Let us do this, Mr. Lange: Let it be understood that the information which I just suggested will come forward and be made a part of the record and then in the event Commission's counsel, after viewing the contract, desire to incorporate in the record, perhaps we might make some further arangements at that time.

Mr. McCreery: I have no real objection except that it clutters up the record.

The Trial Examiner: That's just the point.

Mr. McCreery: We'll submit the contract along with the date of service, and it isn't important enough to raise an objection over.

Mr. Lange: And give the exact date when service commences.

Mr. McCreery. Yes. That will be sent in formally. We will just submit it to the Examiner and let him incorporate it in the record and send a copy to you, if that is satisfactory.

The Trial Examiner: Very well.

Mr. Lange: Yes.

Q. On this Entry No. 208, at the bottom of Page 3 and over on Page 4, that $375 item covering service or information with reference to the geological matters—or what does that—

A. It covers a complete report on the Berthoud field as it existed at that time, and the possibilities in the way of production.

Mr. McCreery: You are referring now to Entry No. 208, Mr. Lange?

Mr. Lange: Yes.

Q. Now, how had that item—the total of that item is $750, wasn't it?

A. Yes.

Q. And you have stated on Page 4 that that was a pre-construction cost; that is, the $750.

Mr. McCreery: In respect to the Greeley branch line.

Mr. Lange: Yes.

Q. Why did you come to that conclusion?

A. I can't see what other conclusion you could arrive at. It is definitely in connection with proposed construction.

Q. The whole $750, then, in your opinion, is to be capitalized?

A. It could properly have been capitalized, yes.

Q. Why was half of it expensed by the company?

A. I can't say at this time why we only capitalized half of it.

Q. Don't you have any opinion about it?

A. No, I don't know that I could express one at the moment.

Q. In other words, it is a total that isn't very readily divisible? I mean, it covered one certain thing and—

A. Probably what the influence was, our undestanding then when this expenditure was authorized, was that the City of Greeley would stand one-half of the expense. They later failed to do that and we absorbed it ourselves as construction cost.

Q. And that is your opinion of why?

A. That is my recollection of the transaction.

Q. Now, in your Entry No. 114, having to do with the—

Mr. McCreery: That entry relates to Exhibit 202?

Mr. Lange: Yes.

Q. Exhibit 202 of Mr. Smith, referred to on Pages 4 and 5 of your Exhibit 242, what does that item cover?

A. Well, just as I state here, it covers a quite extensive report on the oil and gas field activities in this area.

Q. Is that still being incurred every year?

A. Yes, sir.

Q. It tends to cover matters of production of gas, or the geology of gas, or what?

A. The exploration for new finds in the field and the progress of wells in the various "Wild Cat" territories and likewise in wells that have been brought in, if they are important enough to keep a record on.

Q. It covers both oil and gas, I suppose?

A. Well, they usually go together so we get a combined report.

Q. And you say this report is valuable only to the Colorado-Wyoming Gas Company. Now, in what respect is it valuable to the Colorado-Wyoming Gas Company?

A. Well, I think I stated it here, it enables us to keep abreast of developments in the exploration and discovery of gas and we can take such discoveries into effect in the conduct of our own business. In other words, an important discovery of gas in our immediate vicinity would have quite a bearing on our rates and our business in general.

Q. Oh, it would?

A. Yes.

Q. In other words, if you had a supply of gas that you discovered somewhere around in this area, then you would sever your connections with Colorado Interstate?

A. Not necessarily.

Mr. McCreery: The contract covers that.

Mr. Lange: I believe there is such a clause permitting that procedure.

Q. How long is this $300 item—how long has it been incurred? Over what period of years?

A. I would say probably five or six years at least.

Q. As I understand it, it isn't just utilized exclusively for Colorado-Wyoming but Mr. Hancock in his work uses it in connection with the other companies?

Mr. McCreery: Now, just a minute. The statement is just the opposite of what you are stating.

Mr. Lange: Withdraw that.

Q. I understand that the service goes to Mr. Hancock. He is the one that gets the use of that particular service?

A. No.

Q. Well, if not, who does?

A. We get it ourselves and we furnish him a copy. He is naturally interested in developments in our territory.

Q. It goes to you first and then you furnish him a copy?

A. We send him a copy.

Q. And he gets that copy regularly, doesn't he?

A. Yes.

Q. All right, what use does he make of that?

A. I couldn't see that he makes any other use than just to keep in step with the conditions as they are out here. It would have absolutely no value to him in connection with our other properties.

Q. Well, how do you know it wouldn't?

A. Well, use your own head on that. You can figure that yourself.

Q. You say in here to what it is limited, that information. I don't know what Mr. Hancock's activities are.

The Trial Examiner: He said the report was confined to Colorado and Southern Wyoming.

Mr. Lange: That is just what I was getting at. That covers quite a large volume of operations.

The Witness: Well, only a field large enough to affect us in our direct operations here. That's all we're concerned with.

By Mr. Lange:

Q. Well, what about the operations of the Cheyenne Light & Fuel Company in Wyoming?

A. That's us. Colorado-Wyoming—we sell gas to Cheyenne.

Q. Oh, yes. Well, Cheyenne isn't paying any part of this $300?

A. Why should they? It is not their concern, it's Colorado-Wyoming's concern.

Q. You just said in the first breath that you are the same ones.

A. Don't we sell at Cheyenne?

Q. That's right.

A. All right, that's us.

Q. All I am interested in is who is paying the $300.

A. We are, and the distribution company at Cheyenne doesn't give a hoot what we do. It is not concerned with our gas service and gas supplies other than that they want a firm supply of gas to serve their customers.

Q. All right, Mr. Hancock is interested in the Cheyenne Light, Fuel & Power Company, isn't he?

A. I think not. He has no contact with the distribution companies.

Q. He wouldn't even be remotely interested in it?

Mr. McCreery: I object. This is far far afield. There are some limits to this, and after all, the management certainly has some rights in the matter of what it will do, and it seems to me that cross examination is out of line.

Mr. Lange: I have one question to ask further on that with reference to Cheyenne.

The Trial Examiner: Very well.

By Mr. Lange:

Q. If the Cheyenne Light, Fuel & Power Company were able to get gas close by Cheyenne, wouldn't that be of particular interest to them?

A. Well, they probably would be interested in a nearer supply, but the matter would come back to us eventually because we have a firm contract with them.

Q. Oh, you do?

A. We think we do.

Mr. McCreery: The contract is in the record.

By Mr. Lange:

Q. So, even if they were to have a discovery of a field near Cheyenne, that wouldn't be of any benefit to the Cheyenne company?

A. I don't think that would warrant them in violating their contract and going out and contracting for a new supply.

The Trial Examiner: Who publishes that service?

The Witness: It is an individual here, Chester Harper. He renders reports to various companies around in Denver who are interested.

By Mr. Lange.

Q. On Page 5 you have another entry, 115, that covers Exhibit 202 with reference to the computation of capital stock taxes. What's your basis of criticism of that, Mr. Davis?

A. Well, my criticism was that Mr. Smith ignores the requirements of this tax. He sets up a basis here that he feels is the one that you would like to pay on, not the one that you are required to pay on.

Q. Well, on what basis are you figuring the computation?

A. On our declared value.

Q. All right, now, supposing you proceed as you say.

A. Had we set the book value of our stock issue at one dollar per share, the company stock tax computed on Mr. Smith's formula would then amount to only $88, whereas, if we had fixed the stated value of $60 per share the tax would amount to $303.

Q. How could you fix the $60 per share stated value?

A. The same way we fixed it as it now stands.

Q. Can you fix the stated value at $60 without the investment in property being there to cover that amount?

A. Oh, yes. The directors have the privilege of putting any stated value they wish on the stock.

Q. Put any value on it they want to?

A. Yes.

Q. And you would fix a stated value of $60 a share?

A. No, I just used that for a basis there, I could have picked and other—75 or 100 or what-not.

Q. Well, you would have to have a different number of shares, wouldn't you?

A. Not necessarily.

Q. Well, then, how would you make your books balance on your assets side if you used a different figure for your stated value? In fact, how would you proceed?

A. The same way we got a balance with the figure we did use.

Q. In what year did you use that?

A. 1931, I believe.

Q. 1931?

A. Yes.

Mr. McCreery: I think you will find it is a later year if you will look at your state ent.

The Witness: I think the capitalization was taken in 1931.

Mr. McCreery: I thought he meant what year did you use this particular figure.

By Mr. Lange:

Q. Yes, what year did you use them?

A. You mean the recapitalization?

Q. Yes.

A. I believe it was in 1931.

Q. 1931?

A. Yes.

Q. You had 50,000 shares, didn't you, you say, you set up at $60 a share?

A. No, they were set up at $33-1/3 per share.

Q. Yes, but supposing you set them up as you state in your written statement on Page 5, at $60 a share. That would be 3 million dollars, wouldn't it?

A. Yes, sir.

Q. All right, you say that you are privileged to fix the stated value at any amount you want to. Suppose you had a 3 million dollar total like this. Where are your assets to cover that figure?

A. Presumably you have got cash for them or some other consideration.

Q. Well, then, there isn't any difference between you

and Mr. Smith on his computation, Page 2 of the exhibit, is there?

A. No. I take exception to his making any computation there. Why doesn't he take the computation that we filed. That's what's the matter with it.

Q. You say on Page 6 that the stock could have commanded an actual market value at $50 per share. Why do you set a higher declared value than the actual one on your stock?

A. I didn't.

Q. You didn't?

A. We set a declared value on the business.

Q. On the business?

A. The worth of the business.

Q. Well, that is higher than the book value of the stock.

A. Well, I'd hope so. We haven't capitalized to the full limit there. A million and a half dollars doesn't represent the cost of our property by any means.

Q. And you have made a stated value for that amount every year for what period?

A. I think our last declared value was 1939.

Q. And at what rate was that?

A. $2,200,000, I believe.

Q. Well, setting it at that point avoids the payment of any excess profit tax. That's the real result of it, isn't it?

A. That's one of the results, yes.

Q. What other results are there?

A. The other result is that we more nearly reflect the book worth of the plant than the stock issue would indicate.

Q. What was your outstanding stock for that year. 1939?

A. 1939?

Q. Yes.

A. 50,000 shares.

Q. Well, doesn't that represent all the money that the stockholders have in the business?

A. It represents the original investment in buying their stock, yes.

Q. And what is the par value of that stock—no par?

A. No par.

Q. That is as of December 31st, 1937 your capital stock account showed $1,501,000, didn't it?

A. Yes.

Q. And let's see, that is as of December 31st, 1937. That is still the same, isn't it?

A. That's right.

Q. And there isn't any other money that the stockholders have in the company, is there?

A. That represents their invested money.

Q. In the business?

A. Yes. That is the stated value of their stock that was issued to them for the investment they made.

Q. No bond money outstanding?

A. That one million doesn't mean that that is their total investment, that is the book stated value of the stock that was issued in return for the investment made by them.

Q. Well, what other investment is there that they have in the business?

A. A plant which has a book value of $1,900,000, approximately.

Q. And I was just asking you, there is no outstanding bond or no outstanding bonds, are there?

A. No.

Q. Well, in addition to that amount, was there any money put in by the stockholders over and above $1,501,000?

Mr. McCreery: It is immaterial who put in the money. I object to the question. It has no relation to this issue.

Mr. Lange: Well, this witness is particularly well versed in this company's financial setup, its method of computing its taxes, and we are entitled to know.

Mr. McCreery: It is immaterial.

Mr. Lange: We are entitled to know what the capital structure is.

Mr. McCreery: My objection is it is immaterial. The question you asked is immaterial with reference to this capital stock return.

Mr. Lange: I don't think it is. I think it is relevant to a determination of the proper computation.

Mr. McCreery: I am just making my objections, is all.

The Trial Examiner: The witness may answer.

Mr. Lange: Read the question.

(The question referred to was read by the reporter as set forth above.)

The Witness: Yes.

By Mr. Lange:

Q. What was it?

A. Some $400,000.

Q. By whom?

A. By the stockholders. We didn't get $1,800,000 plant out of thin air.

Q. Where is that $400,000 reflected?

A. In various book entries there which Mr. Smith is very familiar with.

Q. Have you got your revised balance sheet in Exhibit 242 before you? Now, where is it there reflected in your balance sheet as of December 31, 1940?

A. Under "Utility Plant." Total of $1,899,997.94.

Q. Where on your balance sheet at December 31, 1940—common capital stock under "Liability and Other Credits," does it show that the stockholders invested any more than $1,501,000?

A. From that account, no, but that account could be $1 just as easy as $1,501,000.

Q. Going back to the balance sheet again, supposing that common capital stock that is set up there as $1,501,000 were just $1 as you say. Where would the balance of it be reflected?

A. You would probably have a large sum down in surplus.

Q. All right, where do you show that on this table?

A. We don't because we have $1,501,000 set up there.

Q. Those are the only two places where it would appear, either one or the other, wouldn't it?

A. If we had it on at $1, we could, but we don't have it on at $1.

Q. On that same balance sheet where you have the depreciation reserve set up for gas plant at $512,122.40, where is that? Isn't that $512,122.40 invested in your gas plant?

A. I wouldn't know whether it was invested in that.

That item there is simply a liability of the company. The money could be anywhere.

Q. You have got it in your liabilities and other credits, I know, but is that set up here as an item that the company is obligated to pay?

A. It is a liability which may arise to call for cash expenditures at some future time.

Mr. Lange: Mr. Examiner, I wonder if we can have a few minutes recess?

The Trial Examiner: Very well.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

The Trial Examiner: The hearing will be in order.

By Mr. Lange:

Q. Turn to your exhibit 242, Entry 117. That covers an item of the annual charge for the State of Delaware Corporation License?

A. Yes.

Q. What license does the company pay in the state of Colorado? Is it the same?

A. They pay a privilege tax in Colorado for the privilege of doing business here based on our investment in the state.

Q. Do you know what amount that is? Is it the same amount?

A. Well, it is variable according to—as your investment varies.

Q. Do you know whether it was around this amount or about $147.19 in 1939?

A. Yes.

Q. Thereabouts.

A. Yes, roughly.

Q. Around there.

A. Yes.

Q. Well, Mr. Smith, as I understand it, took the position in his working capital study—I mean in his exhibit 202, that the amount paid the State of Delaware was a similar amount, or almost similar to the amount paid in Col-

orado that was a tax really attributable to the rate payers twice, isn't it, for the same character of service?

A. It is not the same tax.

Q. In other words, if the company were organized in the State of Colorado and chartered here where it is doing business, there wouldn't be any tax payable in Delaware?

Mr. McCreery: I object. It is wholly immaterial. This happens to be a Delaware corporation, and the question is not responsive to any fact presented in this record.

Mr. Lange: Why, Mr. Davis is criticising the treatment of it in Exhibit 202.

Mr. McCreery: I am objecting to your question. I am not objecting to his criticism.

Mr. Lange: All right, Mr. Davis states this: "I refer now to Entry No. 117, representing annual charge of the state of Delaware for corporation license. This Mr. Smith states is not an allowable operating expense on the ground that a tax of approximately an equal amount is paid to the state of Colorado and is therefore a duplicate charge."

Q. Now what is your criticism of that?

A. Because it is not the same tax.

Q. Isn't that the same tax?

A. They aren't paying it twice for the same purpose.

Q. Well, isn't it paying it twice for the same purpose in effect?

A. No, as I stated, we are a Delaware corporation. We pay a tax for that purpose. We obtained our charter and we pay the State of Colorado a privilege tax for investment of our money here.

Q. Yes, and I was asking you the question whether the Colorado-Wyoming Gas Company, if incorporated under the laws of the State of Colorado where it is doing business whether it would in that event have to pay the Delaware tax?

A. If we weren't incorporated in Delaware, naturally we wouldn't have to pay a Delaware tax.

Q. All right, what service is there to the rate payers on the Colorado-Wyoming line because they are incorporated under the laws of the State of Delaware?

A. I might put it to you this way for the sake of argument: Supposing our lines ran through the State of Kansas but we had no customers there but we were forced to pay the State of Kansas tax on our properties in the state, the fact that we had no customers in Kansas, would we be justified in charging them to the customers in Colorado?

Q. No, I don't think that would be a similar situation, because your line would necessarily have to run through the state, as you put the hypothetical proposition, but your company has all its facilities in the states of Colorado and in Wyoming.

A. Yes, but it so happens that Wyoming does not charge any tax for that purpose.

Q. Well, if the State of Wyoming charged one, you would be properly paying it. It would be necessarily an essential cost in the operation of the physical properties.

A. Mr. Smith doesn't infer that in his entry. He talks as though only one tax would be permissable.

Q. Of course, that is your interpretation of it.

Mr. McCreery: I object to this. The witness has stated his reasons and this is simply resulting in an argument with the witness as to his view.

The Trial Examiner: It seems to me it is getting rather argumentative, Mr. Lange. However, Mr. Davis, isn't this tax in Colorado a tax on the foreign corporation for doing business in the state of Colorado?

The Witness: It is a tax on investment.

The Trial Examiner: For a foreign corporation?

The Witness: That's right. That's one of the requirements to do business in the state of Colorado.

Mr. McCreery: By a foreign corporation.

The Witness: That's right.

By Mr. Lange:

Q. Just one more question right along that very subject. If the Colorado-Wyoming Gas Company were incorporated in the State of Colorado, they would pay the same tax, or approximately the same tax?

A. I believe the treatment is about the same. I have never investigated that.

Q. All right. Well, now, in the next two pages you have made reference to a provision in contracts of the company with reference to cutting off or shutting off industrials when necessary to supply the demands of domestic users, and you set forth on those pages the various contracts and then also you refer to certain franchises that you state contain cut-off or shut-off provisions.

A. Yes.

Q. And set forth the terms of those provisions. Now, you follow that with this statement: "The foregoing restrictions and requirements and the necessary effort thereof, have been overlooked or ignored in all testimony and exhibits on behalf of the Commission?"

How do you arrive at that conclusion?

A. In our study of these exhibits the testimony does not bring out that domestic gas takes priority in all cases over industrial gas and I have attempted to show that priority here.

Q. In other words, there is no question but what you are presenting it here but what I don't think is proper, is the statement that all Commission witnesses in their exhibits and testimony have ignored this. Mr. O'Connor testified to some of those matters in connection with his Exhibit 51, didn't he?

A. Perhaps, but I don't think he put the necessary effect thereof in his exhibit. He soft-pedals that sort of thing.

Q. He soft-pedals it?

A. Yes.

Q. Wasn't he interrogated by Mr. McCreery about it, and didn't he state in answer to whatever Mr. McCreery's questions were with reference to any of those phases?

Mr. McCreery: What is involved here is the effect given to it, and Mr. O'Connor's exhibit was a mere historical statement. The exhibits that have dealt with the situation from the point of view of operations in volume and in dollars offered by the Commission are the exhibits to which Mr. Davis refers in the opinion expressed here in his testimony, among those, Mr. Lyon, Mr. Knapp, Mr. Vaught

and Mr. Smith, and all of the witnesses who dealt with the financial picture of the operation of this company. Mr. O'Connor's exhibit was a mere historical speech.

Mr. Lange: I was referring to Mr. O'Connor's testimony on cross examination.

Mr. McCreery: Yes, it was mentioned there, but he said no effect has been given and he has a right to express his opinion and that is his opinion.

Mr. Lange: But I don't think that this statement of the witness—I think that this statement certainly ought to be stricken as a pure conclusion on his part with reference to that; that is, the statement that they have been overlooked or ignored in all testimony.

Mr. McCreery: And the necessary effect thereof. A mere referring to it is not what Mr. Davis is referring to. He is referring to the effect that that method of doing business must have upon all of the operations of this company and that is his opinion expressed by him, even though counsel for the Commission may not agree with him.

Mr. Lange: Of course, the record will reflect exactly what that is and I still believe, though, that that statement as to the restrictions and requirements and the necessary effect thereof, have been overlooked and ignored in all testimony and exhibits on behalf of the Commission,——is purely a conclusion of the witness. I think it isn't fair to the witnesses of the Commission and I think that part of it certainly ought to be stricken.

The Trial Examiner: Well, I think myself that the particular paragraph in question deals with the matter about which the record will loudly speak and whatever this witness has to say about it, of course, while he may have that opinion in the matter, nevertheless, the record still speaks for itself. I can't see that that particular paragraph serves any purpose or has any proper basis for being contained in this particular statement.

Mr. Lange: I think, then—well, as I say, the place for it is not proper in this, and I move the Examiner to have it stricken from the exhibit.

The Trial Examiner: Of course the reservation was made at the time the statement was read that any portion of it could be stricken and the Examiner is rather inclined to grant the motion of Commission's counsel with respect to this particular paragraph.

Mr. McCreery: And let the record speak for itself.

The Trial Examiner: Yes.

By Mr. Lange:

Q. Now, the next paragrph, Mr. Davis, states: "Natural gas has always been sold and is sold to every industrial user, whether on direct sale or under resale contract, at a price in excess of the purchase price paid for such gas."

A. Yes, sir.

Q. What is your interpretation of that, or rather, what is your purpose in making that statement?

A. I merely wanted to establish here that we are not selling gas to anyone for less than what that gas cost us.

Q. Oh, you mean when you speak of less than what the gas cost you, you mean less than what you pay for it at the metering station where you get it from Colorado Interstate Gas Company?

A. What the natural gas costs us per foot.

Q. This statement on Page 2 takes into consideration no distance that gas may travel to industrial users from that metering point?

A. I am not taking into account the cost of operations or incremental costs.

The Trial Examiner: You have reference to the contract price?

The Witness: Purchase price, yes.

By Mr. Lange:

Q. I was wondering what you had in mind in making a comparison with what you sell it for at the delivery point for as distinguished from what you paid for it at the metering station of Colorado Interstate.

A. I think that probably some of the exhibits that have

come in here, you might get the inference from them that we were selling gas for less than it cost us.

Q. Well, is this less than the costs you have?

A. No. We have operating costs. I mention here only the purchase price of said gas.

Q. You are just stopping at some particular point?

A. I am stopping at that point, yes.

Q. And not taking into consideration any other costs?

A. No.

Q. The next page, where you have these figures as to peak day purchases and deliveries, the February 1939 figures on gas delivered to Great Western Sugar Company, you have a notation here that the supply was cut off at 2:15 p. m. for the balance of the day, that is, February 9, 1939. How much gas had been delivered that day before the cut off?

A. To the Great Western Sugar Company?

Q. Yes.

A. I don't have that figure separately, but we do show there a total of 522 Mcf. had been delivered to all industrial customers during that 24 hours.

Q. Wasn't there in addition to that 1099 Mcf. delivered before that cut off?

Mr. McCreery: We are trying to get it from the work sheets which Mr. Davis has to have before him in answering your question, Mr. Lange.

Mr. Lange: I just wanted to get those figures in to get the complete picture.

Mr. McCreery: I was getting that work sheet. I think that is the correct figure, but I would like to have him have that before him.

By Mr. Lange:

Q. What does your work sheet show with reference to that on the deliveries to Great Western Sugar Company on February 9, 1939?

Mr. McCreery: Prior to the 2:15 p. m. shut off?

Mr. Lange: Yes.

The Witness: It shows we delivered during that period

1,099,000 cubic feet. That is computed at a pressure base of 14.65.

By Mr. Lange:

Q. And then have you got it computed at the 12.9 pounds pressure base?

A. Yes, 1,248,000 cubic feet.

Q. So you would add in each instance, or, rather, you would add at the 14.65 pounds pressure base, 522, to the 1099, wouldn't you—Mcf. in each instance? Wouldn't you add that 522 that you just stated to the 1099 Mcf.?

A. I believe you would.

Q. It would give you a total of 1621 Mcf. at 14.65?

A. To all industrials.

Q. And under the 12.9 pressure base you would add the 522—the 593 to the 1248?

A. That's right.

Q. Which would give you 1841 Mcf.?

A. Yes, 1841.

Mr. Lange: May we make those corrections, Mr. McCreery, so we can have them right in the record?

Mr. McCreery: You can add them in the record. They aren't corrections. It is quite agreeable if you want to put them there, but they aren't by way of corrections.

Mr. Lange: Well, wouldn't it give the full picture as to the total industrial for that date?

Mr. McCreery: Up to 2:15. What we are showing is what happened on that day at 2:15, and that this was the remaining load, but if you want to add it, we have no objection at all, but we don't want it added as a correction of an error, because there is no error involved.

The Trial Examiner: I think perhaps it might be well with the explanation that has been made to—

Mr. Lange: Very well. I was just thinking of having it in at that point, but it isn't essential.

The Trial Examiner: What they are showing there is the situation after 2:15, is that correct?

Mr. McCreery: Yes. We wanted to show that a sub-

stantial industrial load was delivered before the shut off at that time during the day and there remained on during the day 522 at 14.65.

By Mr. Lange:

Q. During the next—you have on the next page of the exhibit, you have two years actual, expenses and one year, 1941, estimated.

A. Yes.

Q. These 1941 estimated expenses, did you compute those?

A. I did, yes.

Q. On what basis did you arrive at those figures?

Mr. McCreery: For your information, these expenses were computed and set out in the exhibit offered by Mr. Hancock, Exhibit No. 116 originally, and this is a recomputation of that detail contained in that exhibit, reflecting the actual completed year 1940 and a revision for 1941 of regulatory commission expense and the elimination from 1939, 1940 and 1941 and subsequent years of any allowance for donations and expense accounts along the line of those which were referred to in Mr. Smith's exhibit so that those are the only variations from the original computation if that will facilitate your examination.

Mr. Lange: Yes.

Mr. McCreery: There are no changes.

By Mr. Lange:

Q. Then what I want to ask Mr. Davis about is that portion of the breakdown appearing on the succeeding page with reference to his amortization of regulatory commission expense. Why was that computed in that fashion?

A. Under the belief that that would be the proper way to dispose of it.

Q. You just figured a five-year period of amortization?

A. Yes.

Q. Without any particular reason for taking five years or any other period?

A. Well that's the customary block, I believe, that the Commission uses.

Mr. McCreery: It is figured both ways.

By Mr. Lange:

Q. The Commission, of course, hasn't used any in this proceeding as yet.

A. Yes, that's true.

Q. Exactly what are your mechanics in making that computation, Mr. Davis?

A. We are accumulating the 1939 and 1940 and 1941 and 1942 expenses as anticipated they would be and writing them off at the rate of 20 per cent a year as they occur.

Q. That is the basis of the computation you have used there, is that right?

A. Yes, except that for 1942 and from there on we anticipate approximately an even expenditure per year of 2500 dollars. This will be continued, which will be continuing from there on.

Q. Is that 2500 dollars estimated by Mr. Hancock?

Mr. McCreery: Yes.

The Witness: Yes.

Mr. McCreery: Except in the respect that it is indicated that this is an identical computation.

Mr. Lange: I see.

Q. There is one item on this estimated 1941 that is $2.00 for a test hole. Was that an item of expense in 1939?

A. In 1939?

Q. Yes.

A. Yes, that expense was incurred in 1939 and was overlooked by us and charged directly to operating expense. We now propose to retrieve that and put it back into regulatory commission expense.

Mr. McCreery: It was in connection with the test holes?

The Witness: It was in connection with those coupons we cut out of the line.

By Mr. Lange:

Q. Well, then, it really belongs in the setup in 1939, doesn't it?

A. Yes, although it won't appear on our books under this regulatory commission expense until 1941.

Q. Yes.

Mr. McCreery: But it could be referred back?

The Witness: It could be dated as of 1939.

Mr. McCreery: I think that appears in Mr. Smith's Exhibit 202 as an item of regulatory commission expense, does it not?

The Witness: Yes.

By Mr. Lange:

Q. Now, on this same page of your exhibit, executive salaries, I notice the salary of the Secretary. That is your salary for 1939?

A. Yes.

Q. For 1939, 1940, they are $3113, and you have an estimated $4800 for 1941. During 1939 and 1940, I will ask you whether a portion of this salary was paid by any other company.

A. Yes, a small portion was paid by some other little companies which I looked after in a small way.

Q. Approximately what was that amount per year?

A. About $200 I believe.

Q. Now, do you take that into consideration in your estimate in 1941?

A. No, because those companies are practically dissolved now and the work is disappearing.

Mr. McCreery: So that that payment does not hereafter come from those companies at all?

The Witness: There would be nothing there to charge it to.

By Mr. Lange:

Q. What does the letter "R" in parenthesis indicate under "Legal Expense" in 1940, $247.50?

A. Credit.

(Vol. 84, pp. 12524-12577.)

Company Exhibit No. 243 (Appendix this Record).

The calculations in Exhibit 243, Statements Nos. 1, 2 and 3 (see, Appendix), indicate the method by which the total sum of $23,718.50 was computed.

On cross-examination the witness *Willard* was questioned by Commission Counsel as to his criticism *(Entries 205 and 206, Exhibit 199)* of the treatment of those items by the Commission's accountants. He stated that his criticism was that the two calculations of interest on the main 10-inch and 8-inch line is that as soon as a partial service went into effect from either of those lines, the entire portion of the line up to point of service was eliminated entirely from interest during construction charges. The 10-inch main line from Littleton to Boulder started service to Boulder on September 29, 1929. Interest-during construction charges were figured (by Vaught) to October 1, 1929, and no further interest charges allowed. The 10-inch line was not designed to serve Boulder alone, and when the City of Boulder alone started service, it should not be considered that the entire construction cost of the 10-inch line went into service. The same applies to the 8-inch line from Boulder Junction to Fort Collins. This applies even though there is some delivery of gas through the line. The part used was segregated on the basis of the demand actually used by the line based on deliveries December 26, 1938. The 10-inch line was designed to carry a certain load. Part of that load was supposed to go to the City of Boulder, part of it to other points north of Boulder, and he allocated from the 10-inch main line the cost applicable to Boulder, based on the actual deliveries December 26, 1938. His computation is not directly or indirectly a matter of excess capacity. Interest during construction "is the interest charges on the property in the process of construction until such construction program is complete, in its original inception."

(Vol. 84, pp. 12,579-12,581.)

The witness was questioned as to whether or not certain revenues had accrued from the distribution of gas to Boulder, to which he replied that such revenues were assigned

to the investment which had been removed from the total investment on which interest was charged. Such revenue was not properly assignable to the entire line. (Vol. 84, p. 12,586.) December 26, 1938, was used because that was the maximum Boulder demand upon the system up to the time the calculation was made. (Vol. 84, p. 12,588.)

The witness was then questioned in regard to a letter of November 7, 1939, from Colorado-Wyoming Company to the Commission, in which it was stated that Public Service Company of Colorado requested that the line be of sufficient capacity to enable the Company to serve gas to the Valmont plant. This involved changes in the construction from Arvada to Boulder Junction. In connection with this the witness testified as follows:

"A. I eliminated in its entirety the entire 8-inch and 6-inch branch line from Boulder Junction to the location where the Valmont branch now takes off and extending on into the City of Boulder. I eliminated from the cost of the 10-inch line which now runs all the way from Littleton to Boulder Junction the proportionate cost assigned due to this peak reached on the particular day that I have previously mentioned.

"Q. Then in your opinion the construction to be placed on the term 'interest during construction,' would cover a period of time that the final link in the line would be completed, although there was service actually, that there was service actually being had along the entire line up to that last link? You would suspend a proportionate part of interest during construction because of the incompleted last link of the line?

"A. I would rather put it another way. I would eliminate from interest during construction charges—those charges assignable to the deliveries that were made prior to the final link.

"Q. And in making such computations, what consideration or effect are you giving to the capacity of the line? Does that have anything to do with it?

"A. Well, the capacity of the line naturally has a bearing on the allocation. That is the thing on which the allocation has been made. The capacity of the line on this particular day—."

(Vol. 84, pp. 12,589-12,590.)

In further explaining the exhibit the witness testified: "It assigns a portion of the 10-inch line and the 8-inch line to those customers who receive gas prior to the date gas was delivered at Fort Collins and in assigning a portion of the cost of the 8-inch and the 10-inch line to those customers who receive gas prior to the date gas was delivered at Fort Collins and in assigning a portion of the cost of the 8-inch and the 10-inch line to those customers who receive gas, I have eliminated from interest during construction charges the applicable charges to those deliveries."

At the same time the revenues received from such deliveries were assigned to that portion of the main line so eliminated.

(Vol. 84, pp. 12,591-12,592.)

Q. Now, first, Mr. Willard, with reference to the entries made by you in Exhibit 243, that is, Entries 205 and 206 of Commission's Exhibit 199, adjustments for interest during construction, what in substance is your criticism of the treatment of those items by the Commission accountants?

A. Well, my criticism of the two calculations of interest on the main 10-inch line and the main 8-inch line is that as soon as a partial service went into effect from either of those lines the entire portion of the line up to that point of service was eliminated from interest during construction charges.

For example, on the 10-inch main line from Littleton to Boulder, service started at Boulder September 29, 1929. Mr. Vaught in his calculation of interest, I believe, he carries the interest charges to October the 1st of 1929 on the 10-inch main line and then dropped any further charges from consideration.

The 10-inch main line from Littleton to Boulder was not designed to serve Boulder alone and when the City of Boulder did start service I would not consider that the entire construction cost of the 10-inch main line went into service. The same theory applies to the 8-inch line from Boulder Junction to Fort Collins.

Q. Now, there is no question—Mr. Vaught did not question the interest item up to the time that service was

actually commenced, did he; that is, a delivery of gas was being made through the line, wasn't it?

A. That is correct.

Q. All right, now, how are you going to make use of any part of the pipe; that is, the main transmission line? How are you going to segregate the part that you say is not in operation from that—

A. I have segregated it on the basis of demand actually used by the line on this day. I have segregated the cost of that line based on deliveries December 26, 1938. That line was designed to carry a certain load. Part of that load was supposed to go to the City of Boulder, part of it to other points north of Boulder, and I have allocated from the 10-inch main line the cost applicable to the Boulder delivery based on the actual deliveries December 26, 1938.

Q. Now, you are there again, if not directly, at least indirectly, getting the matter of excess capacity into the picture, aren't you?

A. No, sir.

Q. You are not?

A. No, sir.

Q. Well, going back to—what is your exact definition of interest during construction as you are treating it in this exhibit?

A. Interest during construction is the interest charges on the property in the process of construction until such construction program is complete, in its original inception.

Q. Such program?

A. Yes.

Q. In other words, you, of course, wouldn't think of having any interest charges accruing or accumulating after the property is in service. There is no such item that accrues as a part of the plant account after the property is in service, is there?

A. Yes, I think so.

Q. Interest during construction?

A. Not interest during construction.

Q. Well, that is what I mean. I am limiting it at this time to the term "interest during construction." That by its very nature is limited to the period of construction.

A. Yes, sir, but the construction project was not completed at the date Boulder was first served with gas.

Q. You mean a part of it was not completed?

A. The construction project which started at Littleton went north to Fort Collins and had branches to various towns from laterals off the main 10-inch and 8-inch line.

Q. Of course, the question at issue in connection with this exhibit is as to whether interest during construction should have been computed and allowed after the first service of gas was had. Isn't that what it boils down to?

A. After first service of the completed project.

Q. Of the completed project?

A. Yes, sir.

Q. But Mr. Vaught did allow it up to the time of first service, didn't he?

A. He allowed it up to the time Boulder was served.

Q. All right, supposing you had a line serving an industrial. How long do you say that interest during construction should be computed on that, the same method applied?

A. I would want to know something of the conditions. If you build a line to serve an industrial and if that is the only customer and the project is completed and the industrial is served, interest during construction would stop.

Q. Well, assume you have a 20-inch line 200 miles in length which was to be constructed, and a 4-inch lateral serving a small community, or you might say an industrial, at the half-way point as a part of the project. In other words, if such a situation were to take place you would continue the interest during construction although the line was ready for service and service had actually commenced on that lateral?

Mr. McCreery: The exhibit shows that he would not continue the interest during construction on that part of the line in serving that 4-inch lateral.

By Mr. Lange:

Q. Exactly where would you stop with the computation of your interest—what portion of the line?

A. I would stop computation of the interest on the actual cost of the 4-inch lateral.

Q. Only?

A. No. I would also assign a portion of the 20-inch line which was applicable to the 4-inch delivery and cease interest during construction charges on that portion of the 20-inch line and that is the very method of the calculation here.

Q. Now, that portion of the 20-inch line through which gas is moving to serve that lateral is completed, isn't it? There isn't anything further to be done on that, is there?

A. In the way of construction you mean?

Q. Yes.

A. No, the line would not be serving gas unless construction were completed up to that point, but nevertheless, I still say that that is a part of a project and the 20-inch line as a 20-inch line has not gone into full service.

Q. Well, the main line, that portion of the main line serving the lateral is in actual use, and the construction of it necessarily has to be complete before you would permit gas to go through it as an operating problem.

A. That is correct, and I would deduct from the total cost of the 20-inch construction charges that portion assignable to the 4-inch delivery.

Q. Yes, but your main line from which this 4-inch lateral gets its gas is a completed pipe up to the point where the lateral connects on. It is complete for service.

A. On that theory each day, week or month, completes a certain part of a construction job and under the basis that you are now talking, interest during construction charges would have to cease on each portion of the line that is completed by the day, week or month, as you see fit.

Q. All right, now, you say that only a portion of this main line that is being utilized for the gas that is served through the lateral is a completed project in so far as interest during construction is concerned and you have only computed a proportionate part of that, haven't you?

A. I have concluded—I have computed a proportionate part of that assigned to the delivery that went through the line.

Q. How can you segregate a portion of the line that necessarily must be complete before even a cubic foot of gas can go through it?

A. By the allocation of demands to the various points for which the line was designed to serve and by actually taking a demand such as I have done here which was reached at some later date and allocating the cost of that line to the portions served.

Q. Now, as soon as gas moved through the line to serve the lateral there was a customer, of course, at the end of

the lateral and certain earnings accrued from that customer, didn't they—certain revenues accrued?

A. Certain revenues. I don't know whether earnings accrued.

Q. All right. Did you credit any part of those net revenues to that particular portion of the main line on which you are still charging a proportionate part of interest during construction?

A. Any revenues that were received from the Boulder delivery, and I assume that that is what you are speaking of now, would be assigned to the investment which has been removed from the total on which interest is being charged.

Q. Was there any portion of that revenue directly assigned to that particular unit of property on which you were still setting up interest during construction?

A. There was revenue being received from the Boulder delivery. There was investment removed from construction costs on which interest during construction was calculated and those revenues are assignable to the costs that were eliminated.

Q. They are assignable, but were any portion of them actually assigned to that particular unit of property?

A. I don't believe there is anyone who can calculate whether or not any earnings were received from the Boulder delivery and get a correct operating expense chargeable to that Boulder delivery for such a thing as an interest credit.

Q. It is just about as difficult a thing as it is to segregate any part subject to interest during construction?

A. Oh, no, that's not a hard calculation at all.

Q. It isn't?

A. No.

Q. Now, how is that computed?

A. Just on the basis of the demands that were reached on this peak day, December 26, 1938.

Q. Now, when was this line—or, rather, when was this interest during construction at issue? What period do you have in mind? What year was that?

A. From October 1, 1929 up through the month of January 1930.

Q. All right, now, this method that you pursued—or, rather, the mechanics that you used in calculating this portion of it on interest during construction it could not have been put into effect at that time?

A. Oh, I think it could. This line was necessarily designed to meet certain peaks at certain localities. I don't have the initial plans on the design but any pipe line has to be designed to carry certain loads to certain localities. Certainly this line was designed on that order.

Q. And this calculation that you have made in Exhibit 243, you have utilized the 1938 peak figures?

A. That is right.

Q. And related them back?

A. That is right, because that was a maximum peak on the system up to the time the calculation was made and if there had been any other maximum peak I would also have considered that.

Q. Do you recall what was said in that letter Mr. Davis wrote to the Commission dated November 7, 1939 that was read into the record by Mr. Hancock relative to this portion of the line, the 10-inch line that was constructed, I think it was from Arvada up to Boulder Junction?

A. I don't know.

Q. I have a copy of that here. Do you recall that letter?

A. Yes, I do.

Q. Well, in other words, the line was not originally designed for that 10-inch portion of it, was it, the 10-inch portion of the line that was constructed was constructed because of Public Service Company of Colorado requested it as set forth in this letter of November 7, 1939?

A. Certainly. Public Service Company of Colorado's request was that this line be designed to serve such customers as it had along the route of the line.

Q. But it resulted in a change from the original design of the line?

A. I don't believe—

Q. Starting at the Valmont plant?

A. Maybe I didn't read far enough in that letter, but I didn't see where it said there was a change in the original design.

Q. All right, this is what the letter says:

"At the time of constructing our main line from Denver to Fort Collins, Public Service Company of Colorado specifically requested that we include sufficient capacity in our line to enable us to serve gas to the Valmont plant. This involved changes in our construction from Arvada to Val-

mont Junction. One increase proposed an 8-inch line from Arvada station to Boulder Junction to a 10-inch size. Also an increase was proposed in a 6-inch line from Boulder Junction to Valmont Junction of an 8-inch line."

Doesn't that propose a change in the original design?

A. That is what it says.

Q. All right. Did you give that consideration in your discussion of this exhibit 243?

A. I eliminated in its entirety the entire 8-inch and 6-inch branch line from Boulder Junction to the location where the Valmont branch now takes off and extending on into the City of Boulder. I eliminated from the cost of the 10-inch line which now runs all the way from Littleton to Boulder Junction the proportionate cost assigned due to this peak reached on the particular day that I have previously mentioned.

Q. Then in your opinion the construction to be placed on the term "interest during construction," would cover a period of time that the final link in the line would be completed, although there was service actually, that there was service actually being had along the entire line up to the last link? You would suspend a proportionate part of interest during construction because of the incompleted last link of the line?

A. I would rather put it another way. I would eliminate from interest during construction charges—those charges assignable to the deliveries that were made prior to the final link.

Q. And in making such computations, what consideration or effect are you giving to the capacity of the line? Does that have anything to do with it?

A. Well, the capacity of the line naturally has a bearing on the allocation. That is the thing on which the allocation has been made. The capacity of the line on this particular day—

Q. Well, then, aren't you getting that portion of interest during construction connected up with the interest on excess capacity?

A. No, sir, not at all.

Q. You aren't?

A. No, because the project as a construction project was not complete and at the day the final construction was com-

plete, all charges cease on the date of final construction completion.

Q. All right, then, if you had service on the line, excepting say a few miles at the farthest end to the north, and had all of your laterals completed and serving all of the customers on every one of those laterals and even those off your main line—directly off the main line, you would still consider that an incomplete project in relation to interest during construction?

A. That portion of the project that is to serve the last customer, yes, sir.

Q. Well, but you aren't limiting it to that?

A. Yes, I believe I am.

Q. You are still giving a proportionate interest, or setting up a proportionate interest charge on the entire rest of the system facilities?

A. This exhibit simply does this: It assigns a portion of the 10-inch line and the 8-inch line to those customers who receive gas prior to the date gas was delivered at Fort Collins and in assigning a portion of the cost of the 8-inch and the 10-inch line to those customers who receive gas, I have eliminated from interest during construction charges the applicable charges to those deliveries.

Q. Yes, but you still maintain that it would not be possible to have assigned to those particular portions of the line, on which you are still setting up interest during construction the similar proportionate part of the revenues received?

A. Well, any revenues received from those deliveries are assignable to the construction costs that have been eliminated in the interest during construction calculation.

Q. Yes, but you can't get your same proportions. Your proportionate part of your revenue couldn't be made applicable under your construction to the same proportionate part of the interest charge. It couldn't be a correct accounting offset setup, if you want to put it that way, or put on the books?

A. Oh, I believe an accounting setup probably could be made at the time of construction and delivery, if the time of all men engaged in operations were so segregated to indicate charges against each delivery in the system.

Q. You say it could be done?

A. If each individual would segregate his time to some

portion of the system that he was working on, that could be done, but that isn't practical at all.

Q. Well, it wasn't in fact done.

A. No, it never would be done.

Q. Well, then, you get right back to the situation that you are serving gas through a particular portion of your system that is supplying customers from whom revenue is received and there is no direct relation to whatever credit *them* may be from that revenue against your interest charge for that particular line that you utilize. You can't definitely relate the correct proportionate part of your revenue accruing to the proportionate part of your interest charge that you are setting up.

A. No, there aren't records available to do that. That gas may have been sold during the first month at a loss and a substantial loss. Operating expenses may have been such that they were high during the early months of delivery when volumes of gas were low and instead of having a credit against interest during construction, it may be the reverse. It is hard to tell whether we made any money out of the first two months of delivery at Boulder.

Q. You don't know that?

A. No.

Q. Have you ever made any check on that?

A. I don't believe a check could be made.

Q. Well, that wasn't the only point of delivery at that time, was it, Mr. Willard?

A. No, there were four points of delivery before the final connection at Fort Collins. Boulder was connected—now, when I say "connected," I mean the date to which Mr. Vaught carried his interest charges. The actual connection may have been a few days or a week ahead of this date, but I have accepted his date for interest charges. Boulder was connected September the 30th, 1929. Edgewater was connected October 31, 1929. The Great Western Sugar Company load was connected November 30, 1929, and Arvada and Berthoud were connected December 15, 1929. Those were the only deliveries prior to the final connection at Fort Collins which was the 31st of January, 1930.

Q. Now, I take it that you have no argument as to the correctness of the accounting principle applicable where you are still charging interest during construction on either

a line, or a portion of the line that you say construction is not entirely completed, to credit against that interest during construction any revenues received?

Mr. McCreery: What do you mean "portion"?—lineal portion or portion of capacity?

Mr. Lange: Any portion of the line that is still being charged with interest, using the formula that Mr. Willard employs and the proper credit for revenue be made. I mean taking his view of it, that the entire project had not reached its final construction state, but gas was being delivered to a portion of the main—through the main line, up to a certain point and delivered to a lateral.

Mr. McCreery: Using a portion of the capacity of the main line up to that point, is that what you mean?

Mr. Lange: Whatever it may use. Gas may flow through a 10-inch line as well as through an 8-inch line or a 12-inch line. This gas is moving through that completed portion of the main line to the lateral and delivered to a customer from whom revenue accrues. There is net revenue. Shouldn't that be applicable to whatever charge you assess against the main line utilized in interest during construction?

Mr. McCreery: I will ask to have it clarified. Does he mean the capacity of the line, that portion of the capacity of the line used which is the basis of this exhibit? His question is not clear.

Mr. Lange: I disregard capacity entirely. You have a certain investment in that main line that goes up to the point of the lateral through which gas is being delivered. That main line is complete up to that point. You have got certain revenues at the end of that lateral. I want to ask the witness as an accounting problem whether it is not correct to credit that revenue as against whatever interest charge you are still setting up on this main line that is being used.

The Trial Examiner: You say now, Mr. Lange, "revenue." You said before "net revenue."

Mr. Lange: There is just one revenue item in the picture.

Mr. McCreery: I want this question made clear. As I

understand it, a certain proportion of the capacity of the line, however small it may be, is utilized by the supposed lateral. Now, I want to know whether Mr. Lange refers to that proportion of the main line capacity which is devoted to this lateral or the remaining portion of the main line which has not yet had service for the purposes for which it was built.

Mr. Lange: I mean the total investment in that main line.

Mr. McCreery: You mean the whole pipe?

Mr. Lange: Yes, the whole pipe, because I don't think it can be segregated.

The Witness: Well, in the first place I think it would be impossible to determine whether or not there was any net revenue from a delivery that is being made during a construction program. If there were any net revenue, I think it is proper to assign that net revenue to the construction charges applicable to the delivery from which the net revenue was obtained.

By Mr. Lange:

Q. Was that done in this particular instance?

A. I eliminated in this instance the investment assignable to the deliveries as they came on and if there was any net revenue it applied to the investment which has been eliminated from this total for interest calculations.

Q. But there was no segregation of it made—no attempt to segregate it?

A. Of revenue?

Q. Yes.

A. No.

(Vol. 84, pp. 12579-12597.)

By *Entry 207, Exhibit 199, Vaught* eliminates "certain traveling expenses" for the year 1929 from Plant Account in the amount of $543.32. His statement in that behalf is:

"To reverse Company's traveling auditor's adjustment (T. V. 894, May 16, 1930) which capitalized officers' traveling expenses previously charged to expense by the Company in 1929.

"The accounting entries made by the local accounting staff when the charges originated, are considered as evidence that the items were then regarded as applicable to operating expenses rather than to construction. No evidence was found to show that the expenses related to construction."

(Ex. 199, p. 18.)

On cross-examination, the witness Vaught stated that had the original charge by the local accounting officers been made to capital, and later reversed by the traveling auditor and by him charged to expense, in precisely the same manner as was done in connection with the charges dealt with in Entry 207, he *(Vaught)* would not have questioned the action of the traveling auditor. (Vol. 66, pp. 9558, 9559.)

Entry 208, Exhibit 199 by *Vaught*, eliminates $375.00 capitalized in 1930, from Plant Account. This was pre-construction costs in relation to the Greeley line, built later. The statement of Vaught follows:

"This amount represents one-half of the cost of a report furnished by the above firm, covering 'an examination of Berthoud field, presentation of facts concerning the field before the City Council of Greeley and preparation of reports and maps on the Berthoud field; two reports furnished to Mr. Lee Carrol of the Greeley City Council and two to the Colorado-Wyoming Gas Company.'

"It appears that the purpose of the report was to determine the feasibility of serving the City of Greeley with Berthoud field gas rather than Texas gas. The result of the report showed that it would be impossible for Berthoud field production to meet the requirement of the City of Greeley.

"In view of the above facts and the fact that one-half of the cost was charged to operating expense at the time payment was made it appears the whole of the cost should have been considered as a cost of acquiring town-border service at Greeley rather than a cost of construction of the Greeley lateral."

(Exhibit 199, p. 19.)

On cross-examination *Vaught*, made a distinction (a) between the capitalization of such an item, had it occurred in 1925 before any part of the Company's system had been built and (b) occurring in 1930 when a part of the system had been built and when the Loveland-Johnstown-Greeley line (to which the item in question related) was merely projected. The line itself when later constructed, of course, was properly capitalizable. (Vol. 66, pp. 9574-9580.)

In rebuttal, H. P. Davis, Secretary of the Company, testified:

"Referring to Entry 208, page 19, Exhibit 199, *Vaught* has eliminated from plant account an item of $375.00 which he states was capitalized on voucher 1988, and which in his opinion should have been charged to expense. Mr. Vaught made no inquiry regarding this item.

"In 1928, the Berthoud Oil Field, near Berthoud, Colorado, fell into the control of certain promotional interests, who later organized themselves under the name of Standard Oil Company of Colorado. These interests promptly busied themselves with promoting the sale of gas which they proposed to produce from the field. They failed to make engineering and geological studies as to the character, extent, life and potentialities of the field but devoted their attention to securing franchises in the towns of Berthoud, Johnstown, Loveland, Longmont and Greeley without proper investigation of the possibilities of the field. These commitments were far in excess of the possible production of the field but persistent representations were continued to be made by them to the various towns with the result that the city of Greeley declined to discuss or entertain the offer of Colorado-Wyoming Gas Company to extend a branch line to Greeley and to serve the distribution company with gas from its lines. In the latter part of 1929 we requested Messrs. Fisher and Lowrie, geological engineers to examine the Berthoud Field and present their findings before the city council of Greeley. This was done and as a result the council voted to permit the franchise granted Standard Oil Company of Colorado to expire and to grant the Greeley Gas & Fuel Company, the distributing company at Greeley a franchise for distribution of our

gas. The cost of these reports was $750.00 and was definitely a pre-construction cost incurred to make actual construction possible. I feel that Mr. Vaught's revising entry is without foundation."

(Vol. 83, pp. 12,423-12,425.)

Further, the witness, *Davis* testified as to the reason for capitalizing only one-half of the total item:

"Probably what the influence was, our understanding then when this expenditure was authorized, was that the City of Greeley would stand one-half of the expense. They later failed to do that and we absorbed it ourselves as construction cost."

(Vol. 84, p. 12,548.)

Entry 210, Exhibit 199, eliminates $119.36 Organization Expense, capitalized in 1926 and 1931, from the plant account. In the exhibit, at page 20 it was said by *Vaught:*

"The above amount of $40.16 (Vol. 3, January 30, 1926) represents expenditures for a ledger, journal and general books and the $79.20 (Vo. 2833, February 18, 1931) represents filing fees on corporate property located in Colorado."

On cross-examination, the witness *Vaught* maintained that while setting up the books of the Company is a proper organization expense, it should not include the general ledgers; and that while "the filing fees" covered "the enlarged capital" in the amount of $264,000 resulting from building the Fort Collins-Littleton system, that item should not be capitalized.

(Vol. 66, pp. 9580-9583.)

By *Entry 211, Exhibit 199,* the witness *Vaught* eliminates certain organization expense capitalized in 1926 and 1932, in the amount of $1,017.76, from the plant account as follows:

"Date	Reference	Description	Amount
Jan. 31, 1926	T. V. 9	Director's fees, 12/19/25	$200.00
		Fee for filing annual report	2.00
May 31, 1926	Vo. 170	Tax stamp	50.76
		Tax on capital stock	15.00
June 28, 1932	Vo. 3565	Original issue documentary stamp tax	750.00
			$1,017.76

"The charges dated January 31, 1926 covered by transfer Voucher 9 represent items which should have been charged to expense at the time incurred.

"The charges covered by Vouchers 170 and 3565, respectively, appear to represent expenses incurred in connection with issuance of capital stock and therefore should be classified as 'Capital Stock Expense.'"

(Exhibit 199, p. 21.)

The witness *Vaught*, on cross-examination, testified that there were two directors' meetings December 19, 1925; that the first meeting of directors was held December 1, 1925; that the meetings of December 18, 1925 came next; and that at the three meetings only the following business was transacted.

"A. At the first meeting held December 18, 1925, the by-laws were approved. Any two officers could sign checks, notes, and so forth. That was the business carried on at the first meeting, December 18, 1925.

"Q. And the second meeting?

"A. The second meeting of December 18, 1925, at it a resolution was adopted accepting the offer of H. O. Caster dated December 18, 1925; officers were authorized to issue 4,990 shares of capital stock therewith which should be deemed fully paid and not liable for any further assessment. The officers were authorized to pay to or upon the order of H. O. Caster $76,800.

"Q. That was all the business transacted?

"A. That was all the business transacted.

"Q. Were there any director's fees paid for the first meeting in December?

"A. I would have to check that to be sure—I don't believe there were."

(Vol. 66, p. 9586.)

The filing fee, tax stamp, tax on capital stock, and original issue documentary stamp tax, all relate to the amendment of articles and increase in capital stock (Ex. 100), due to the enlarged capital required by the construction of the Littleton-Fort Collins system (Vol. 66, pp. 9584-9590): The witness de ied that these items belong under the Federal Power Commission "Uniform System of Accounts, Natural Gas Companies, 301, Organization" and items as detailed therein. (Vol. 66, pp. 9591-9592.)

By *Entry 212, Exhibit 199, Vaught* eliminates from the Plant Account the facilities constructed for rendering service to International Metal Foundation in the amount of $4,430.67 as "Gas Plant Held for Future Use." (Ex. 199, p. 22.)

The facilities in question are now "in use," as shown by the testimony of H. P. Davis, Secretary of the Company, as follows:

"Referring to Exhibit 199, Entry No. 212, page 22, Mr. Vaught has reclassified the cost of facilities installed to serve the International Metal Foundation to Gas Plant Held for Future Use. The building, which was to have been served was constructed for use as a smelter, has now been leased to the U. S. Government for use as a central motor repair depot. We have agreed to render gas service to this depot. Our pipe line and measuring facilities *are being placed* in readiness to commence this service. The form of contract has been tendered to the government and we are assured it will be executed and service begun on or about March 1. Accordingly, the Vaught reclassification entry No. 212 must be voided, as this branch line is 'Plant in Service.'"

(Vol. 83, p. 12,423; Ex. 287.)

In *Entries 213-217, inclusive, 218-219, 222 and 223, Exhibit 199* the witness *Vaught* eliminates and reclassifies from the

Plant Account $3,278.54 in entries 213-216, inclusive. $2,111.24 in Entry 218; and $1,007.31 in Entry 219 (for the reasons stated by the Examiner, Ex. 199, pp. 22, 23, 24, 27, 30, 33). The various amounts stated as reflected in the enumerated entries were eliminated by the Company witness *Willard* from Plant Account in Exhibit 245, revising plant accounts as contained in Exhibits 111, 115, 117, 118. (Vol. 83, pp. 12,440-12,442.) These eliminations were also reflected in "Net Return" (Ex. 248.

Entry 217, Exhibit 199, relates to "interest during construction," which is covered in re-computation of that interest by both the witness *Vaught* and Company witness *Willard* (Ex. 199, p. 30).

Entries 222 and 223, Exhibit 199, amounting to $51.63 and $29.74, respectively, correct minor errors in retirement of property. (Ex. 199, p. 36.)

(b) Depreciation. (Ex. 107, 108, 109, 110, 111.)

HARRY D. HANCOCK testified upon this subject on behalf of Colorado-Wyoming Company.

The witness, in his preliminary statement, detailed his education, employment and experience, but in view of the record herein, which discloses that he is outstanding in his profession, it is only necessary to refer briefly to his qualifications.

He has specialized in gas engineering work for the past 28 years and in natural gas engineering work for the past 20 years. He is and for many years last past has been consulting gas engineer for all the Cities Service Gas properties.

> "In conjunction with my professional work as a design, operating and consulting engineer it has been and is necessary for me to study and analyze the records of the various companies and properties with which I have been and am now connected in a professional capacity. I have so familiarized myself in the case of the Colorado-Wyoming Gas Company, as well as other companies, with the pertinent records relevant to my engineering studies."
>
> (Vol. 24, p. 3386.)

He testified that since January, 1927, he has been Consult-

ing Engineer on natural gas, production, transmission and distribution problems of the Cities Service Company and its subsidiaries. The pipeline and distribution companies, to which he rendered service in this capacity, have approximately 14,000 miles of gas pipelines and mains, serve in excess of 400,000 customers, and sell approximately 134 billion cubic feet of gas per year.

He has spent a portion of his time in the last few years in connection with the activities in various professional and trade associations and their committees, including Committee D-3 on Gaseous Fuels of the American Society of Testing Materials; the Main Technical and Research Committee of the American Gas Association; the Gas Measurement Committee of the American Gas Association; the Committee on Production Valves and Fittings of the American Petroleum Institute; Chairman of the Rate Structure Committee of the American Gas Association; and the Pipeline Committee of the Natural Gas Section of the American Gas Association. In connection with the activities of the committee last named, he has engaged in various natural gas engineering studies, including investigations of pipeline leakage, the flow of natural gas in pipelines and the phenomenon of the formation of natural gas hydrates in high-pressure gas pipelines. These studies were conducted in cooperation with the United States Bureau of Mines. He has also engaged in the formulation of the American Tentative Standard for Pressure Piping, sponsored by the American Society of Mechanical Engineers and approved by the American Standards Association. All of these activities are continuing at the present time. He is now Chairman of the Natural Gas Section of the American Gas Association (Vol. 24, pp. 3383-3387).

He has frequently testified before numerous regulatory bodies and commissions (Vol. 27, pp. 3506-3510).

In 1939, he inspected the pipeline system, compressing stations and measuring stations of Colorado-Wyoming Company, to determine the condition of these items of property in relation to new or original condition, for presentation in this case.

In connection with the preparation of his testimony and exhibits in this case, he made no investigation and had no in-

formation before him as to the reserves of gas available to the Colorado-Wyoming Company, through the companies from which it purchased gas (Vol. 25, pp. 3510-3512).

As to the method and technique of his pipe line inspection, he testified as follows:

"The pipe line system was inspected under my direction at 83 places, and 35 of these inspections were made by me personally. In addition, 26 inspections made by F. W. Stoddart were observed by me personally.

"There are two series of inspections—Inspection No. M-1 through M-55, referring to main-line inspection, and B-1 through B-28, referring to branch-line inspections.

"I have prepared a report containing the observations recorded during the inspection and conclusions reached as to the condition of the pipe and of the coating inspected.

"The *Station No.* is the number of feet from a reference point shown on one of the company's maps to the inspection location. The *Map No.* is the number of the company's maps which includes the location. The location is also given by *Sec.* (Section), *Twp.* (Township), and *Rge.* (Range).

"*Kind of Pipe* is the trade designation indicating the method of manufacture.

"*Joint* indicates the method by which the pipe is joined to the pipes on either side.

"*Maximum Operating Pressure* is the highest operating pressure in lb. per sq. in. to which the pipe is ordinarily subjected.

"*Location Data* includes such measurements from a local point of reference as may facilitate identifying the exact place of inspection and, in addition, such descriptive matter concerning soil and other local conditions as may have a bearing on the deterioration of the pipe or coating.

"*Pipe Coating* includes the trade designation of the type of coating and a description of the appearance and condition of the coating.

"*Corrosion* includes a description of the appearance of

the pipe with special attention to where and to what extent corrosion has occurred.

"The *Section. Length Inches* is the number of inches of pipe cleaned for inspection. The section length was 36 inches in each case. The section was divided into three 12-inch sections designated A, B, and C. The pipe and coating were also inspected in the back-fill at each end of the hole.

"Under *Pit Data* are recorded the *Size* and *Depth* of the seven deepest pits in each of the three 12-inch sections. Where less than seven measurements are recorded in any 12-inch section there were only that number of measurable pits found in that 12-inch section.

"The *Size* of the pit is generally designated by a letter symbol as follows:

"MI—Minute.
"VS—Very Small
"S—Small
"M—Medium
"M-L—Medium-Large
"L—Large
"VL—Very Large
"GD—General Depression

"Under *Depth* is recorded maximum depth of the pit in inches measured by the inspector.

"Under *Remarks* are recorded any other observations which were taken into consideration on arriving at the conclusions or which were not previously covered.

"The observed per cent depreciation of the pipe (or coating) is the conclusion of the inspector as to the ratio (expressed as a percentage instead of as a fraction) of the deterioration observed at the time of the inspection to the total amount of deterioration which would render the same pipe (or coating) in new or original condition without value for the service. The reported per cent condition of the pipe or coating is the difference between 100 and the above referred to per cent of depreciation.

"At the bottom of the pipe line inspection sheet on the

right-hand side appears the name of the inspector who was responsible for the inspection and for the conclusions reached. At the left-hand side is recorded the name of an observer (or the names of two observers in some cases). The observer helped with the inspection and in many instances called to the attention of the inspector certain of the items reported by the inspector.

"Approximately five feet of pipe was uncovered at each of the inspection locations in order to provide an opportunity of inspecting the condition of the pipe and coating in more than the 36-inch sections where the pit measurements were made.

"It was observed generally that the scale coating was in a dormant or inactive condition, thus indicating that the process of corrosion was decelerating.

"Observations were made on various characteristics of the pipe and coating, such as mill roughness, mill marks, mill scale, liquor marks, tool marks, soil-stress marks, and so forth, which were present at or during construction. No consideration was given to such characteristics in determining the per cent condition of the pipe and coating except that it is my opinion that the observed per cent condition as reported of the coatings is understated, due to my taking into consideration to a certain extent, observed defects in coating which are attributable to construction conditions rather than to deterioration after construction.

"The places where the inspections were made were originally spaced so as to result in an inspection of each $20,000 of investment in pipe lines. This procedure indicated approximately 74 inspections. Additional inspection holes, however, were added at the request of the Federal Power Commission engineers, bringing the total number of inspections to 83, which resulted in an inspection for about each $18,000 investment. The location of the inspection holes were initially selected uniformly along the lines but the location of 11 holes were slightly moved to avoid such obstacles as traffic, driveways, crops, railroads, and so forth.

"In arriving at the conclusion as to the condition of the pipe inspected, I have used the same method which I cus-

tomarily use in grading or qualifying pipe for any particular service requirement. In other words, when I report a pipe to be in 90 per cent condition, for example, I mean that such pipe is in 90 per cent condition in relation to the same pipe in new or original condition, and that it would be suitable, in my opinion, for use in any service where such pipe in 90 per cent of new condition would conform to service requirements.

"It is my general conclusion that the pipe line system of this company is in excellent condition as a whole, and that the only serious deterioration which has taken place is in those few places, involving swampy ground and bad soil conditions, where the factors which cause more active corrosion are present for comparatively short lengths of line.

"I believe that my conclusion that the pipe line system as a whole is in excellent condition is substantiated by the experience of the company in respect to the 'lost and unaccounted for gas' item. At the present time, the 'lost and unaccounted for gas' of the company is approximately 60 M. c. f. per year per mile of equivalent 3-inch pipe at 100 pounds per square inch pressure, or only 1.8 per cent of the volume of gas handled.

"The arithmetical average per cent condition of the pipe and coatings at the 83 places of inspection were 93.43 per cent and 61.08 per cent respectively. The observed weighted per cent condition of the pipe lines, including pipe and coatings, based on investment data furnished to me, was 92.46 per cent."

(Vol. 24, pp. 3388-3393.)

The plant and investment data correspond to the items of property listed and classified in Exhibit 109, as reflected on the Company's books and records as to cost; and were furnished to the witness in form compiled by Mr. Willard (Vol. 25, pp. 2503, 3514-3515).

The witness identified Exhibit 108, which is the detailed report, consisting of the 83 main line and branch line inspection sheets above referred to (Vol. 24, p. 3393), each sheet of which is in the form as above described under title "Pipeline Inspection."

The witness *Hancock* further testified:

"The Wellington, Arvada and Arapahoe compressing stations have been inspected for the purpose of determining the condition of these items of property in relation to new or original condition.

"The principal classes of property in the compressor stations were inspected and the depreciation of each class of property determined separately. Special attention was given to deterioration of those parts of equipment which are subject to wear. The station piping was inspected under my direction at 16 places in the Wellington station, and 15 places in the Arvada station.

"Based on the observed depreciation reported in Exhibit No. 108, I arrived at the conclusion that the Wellington station was in 87.65 per cent condition as a whole, that the Arvada station was in 91.48 per cent condition as a whole, and that the Arapahoe station was in 100 per cent condition as a whole. The per cent condition of the individual items of property were arrived at to even percentages, and the above referred to per cent conditions to two decimal places is the result of applying the even per cent conditions to the individual items of property and arriving at the averaged weighted per cent condition for each station as a whole.

"*Measuring Stations.*

"I have made an inspection of the measuring stations of the company for the purpose of determining the present condition of these items of property in relation to new or original condition, and find that the various measuring stations of the company are substantially in a uniform condition. The observed per cent condition ranges from 94 per cent to 96 per cent; and I have, therefore, reached the conclusion that the average condition of the measuring stations may be conservatively judged to be 94 per cent.

"*Regulators, Meters and Main Line Services.*

"An inspection has been made under my direction of the regulators, meters, and main line services for the purpose

of determining the condition of these items of property in relation to new or original condition.

"The *regulators* inspected include two large regulators at the Cement Plant and the Valmont Plant, respectively, and the balance of the regulators are in use at stations not classified as measuring stations but delivering gas to small groups of customers and at various places along the main line for the purpose of delivering gas to small customers under right of way agreements.

"The *meters* covered by this inspection include all of the positive meters owned by the company, including meters of this type in measuring stations.

"The *main line services* covered by this inspection include the few small services at various places along the pipe lines.

"Considering these classes of property as a whole, I have reached the conclusion that they are in 88 per cent condition, and have based this conclusion on my inspection of the major items of property and on inspections, under my direction, of the balance of the property in these classifications.

"*Conclusion.*

"The per cents of condition referred to in the foregoing testimony have been applied to pipe lines, compressor stations, measuring stations, regulators, meters and main line services in accordance with the findings of observed depreciation, to which this testimony relates."

(Vol 24, pp. 3394-3396.)

The witness *Hancock* identified Exhibits 109 and 110, which together are the detailed report, consisting of 15 and 164 pipe inspection sheets of the Arvada and Wellington Compressor Stations (Vol. 25, pp. 3426-3428).

The detailed summary of present Per Cent Condition of main and lateral pipelines, compressor stations, and other gas line facilities of Colorado-Wyoming Company are set forth in Exhibit 107 as follows:

"Colorado-Wyoming Gas Company Per Cent Condition of Pipelines

Account 1013	Nominal Size	No. of Inspections	Average Per Cent Condition Pipe	Average Per Cent Condition Coating
Main Line	10"	19	95.6	77.9
	8"	20	93.0	55.3
	6"	16	92.9	41.3
Boulder Branch	8"	1	98.0	40.0
	6"	1	100.0	85.0
Valmont Branch	8"	2	99.0	67.5
Greeley Branch	6"	9	95.3	60.0
Johnstown Branch	6"	3	83.0	51.7
Cement Branch	6"	2	59.5	.....
Golden Branch	4"	3	99.0	70.0
Brighton Branch	3"	1	86.0	95.0
	2½"	5	97.6	94.0
Fort Lupton Branch	2"	1	99.0	95.0

"Colorado-Wyoming Gas Company Per Cent Condition of Compressor Stations

Account 1014		Per Cent Condition
Arapahoe:		
New Construction		100
Arvada:		
Buildings and Foundations		93
Air Compressors and Tanks	(2)	95
Gas Compressors (Main Units)	(6)	92
Gas Cooler	(1)	90
Gas Scrubber	(1)	92
Generator and Engine	(1)	94
Oil Tanks	(4)	90
Switchboards	(3)	96
Water Cooler	(1)	90
Water Pumps	(3)	90
Water Softener	(1)	85
Piping		89
Pipe Coating		28
Miscellaneous Equipment		88

Wellington:		
Buildings and Foundations		90
Air Compressors and Tanks	(2)	80
Gas Compressors (Main Units)	(4)	90
Gas Cooler	(1)	85
Gas Engines (Auxiliary)	(2)	80
Generator and Switchboard	(1)	85
Oil Tank	(1)	85
Scrubber	(1)	85
Water Pumps	(4)	85
Water Softener	(1)	85
Piping		80
Pipe Coating		24
Miscellaneous Equipment		85

"Colorado-Wyoming Gas Company Per Cent Condition of Other Property

Account	Other Property	Per Cent Condition
1004	Measuring Stations	94
1005	Regulators	88
1006	Meters	88
1016	Main Line Services	88"

All inspections were recorded upon a uniform printed inspection report sheet (Ex. 108-109-110) and each was filled in, in accordance with the observations and conclusions of the inspector upon his examinations at the several points of inspection (Vol. 24, pp. 3388-3393; 3394-3396).

Sheets A-6 and A-10 of Exhibit 109 (inspection of piping at Arvada Compressor Station) are set forth herein in substance, for illustrative purposes, as follows:

"Colorado-Wyoming Gas Company Pipe Inspection Report

Inspection No. A-6
Station—Arvada Compressor Station *Date*—11/24/39

Name of Line—Discharge lines from engine #6.
Date Laid—1931

Size O. D. — 4.500 *Wall Thickness* — .237 *Weight* — 10.88
Cover—20"

Kind of Pipe—Nat'l B.M. Joint—Screwed
Maximum Operating Pressure—300#

Location Data—At northeast end of gas cooler—wet ground gravel and stream sediment from mine dumps.

Pipe Coating—Originally primed—protection gone, rust stains in the soil—½" out from pipe.

Corrosion—Pitting general over all.

Pit Data— Section Length Inches—12-12-12

A. No. Side Size	A. No. Side Depth	B No. Side Size	B No. Side Depth	C So. Side Engine 6 Size	C So. Side Engine 6 Depth
L	.030	M	.040	L	.045
M	.025	M	.025	L	.055
M	.020	S	.020	L	.040
M	.035	S	.020	L	.050
M	.030	S	.040	VL	.060
M	.020	L	.025	M	.035
M	.035	M	.035	L	.025

Remarks—Pipe badly dented in #2 quadrant—section C—where chain tongs were used. Used pipe from Wellington Station—new in 1926 there.

Per Cent Condition: Pipe—74 per cent Coating—0 Per Cent
W. J. Giddings

W. L. Thackrey
Inspector."

"*Colorado-Wyoming Gas Company Pipe Inspection Report*

Inspection No.—A-10.
Station—Arvada Compressor Station *Date*—11/24/39

Name of Line—Return water line between coolers
Date Laid—1930

Size O. D.—8.625 *Wall Thickness*—.277 *Weight*—25.55 *Cover*—25"

Kind of Pipe—Republic *Joint*—Screwed
Maximum Operating Pressure—5 lbs.

Location Data—In very wet ground—South side of gas cooler just outside concrete pit.

Pipe Coating—Primer coating—light rust discolorations outside of paint—condition very good.

Corrosion—Pits scattered.

Pit Data		Section Length Inches—12-12-Collar			
A		B		C 8" Collar	
Size	Depth	Size	Depth	Size	Depth
VL	.050	VS	.040	M	.030
VL	.050	L	.025	M	.040
VL	.040	VS	.025	L	.035
VL	.040	M	.030	S	.025
S	.040	VS	.030	S	.030
M	.040	S	.025	M	.035
M	.030		.030	M	.030

Remarks—Stencil R. S. on collar .080"

Per Cent Condition: Pipe—93 Per Cent *Coating*—80 Per Cent

W. J. Giddings

W. L. Thackrey
Inspector."

The Per Cent Condition appearing on the bottom of each sheet the witness testified "is the ratio of the pressure which the pipe in its present condition is capable of withstanding without showing any distress or distortion or permanent set less the maximum operating pressure, to the pressure in pounds per square inch which the same pipe in new or original condition will stand without showing distress or distortion or permanent set less the maximum operating pressure, in the opinion of the inspector. * * * It is a judgment figure based on experience" (Vol. 25, pp. 3433-3437).

"Q. And all of this information that appears on there was before you when you finally reached the decision that you came to as to the per cent condition?

"A. That is right.

"Q. All right, what did you do after you had one of these sheets before you and the time came for you to determine

this per cent condition at the bottom of the sheet? When was that decision made?

"A. It was made at the time of the inspection.

"Q. At the time of the inspection?

"A. Yes, sir.

"Q. After all of these items had been inserted, you then made these determinations as to the pipe per cent and coating per cent?

"A. That is right.

"Q. And put them on each sheet as you finished your inspection?

"A. That is right."

(Vol. 25, p. 3436.)

Mr. Hancock also testified, the determination of per cent condition of pipe is not a mathematical calculation but is the result of a viewed depreciation of the pipe under inspection related to the condition of new or original pipe. It is ultimately a judgment figure (Vol. 25, p. 3437). Depreciation is not a function of time, although it has certain relation to time, which may be very limited, very extensive, or may have a varying relation from time to time (Vol. 25, p. 3453; See also pp. 3450-3452, 3457-3458). No consideration whatever was given by the witness in his inspections and conclusions to the date of installation of pipe or other items of property (Vol. 25, pp. 3432-3433; 3504-3505).

On cross-examination, the witness was asked and testified:

"Q. Before I overlook it, I will ask you this: Going back to Exhibit 108, if these lines, main and lateral, as set forth in these sheets, are adequately maintained how long would these lines continue to function for the transportation of natural gas?

"A. Subject to adequate maintenance and necessary replacement they would continue indefinitely."

(Vol. 25, p. 3499.)

At the instance of the Examiner, *Mr. Hancock* explained the method of digging the inspection holes and preparing the pipe for inspection, as follows:

"*The Trial Examiner:* Mr. Hancock, you made some

mention of a pick hole in the pipe as the result of digging a pit for inspection, didn't you?

"*The Witness:* Yes, sir.

"*The Trial Examiner:* I am not an engineer and this, perhaps, is rather an academic question, but would you briefly advise me as to the manner in which these pit holes are dug? What precautions are taken not to disturb the pipe as you dig down into the pit?

"*The Witness:* The inspection holes were dug by a contractor, as Mr. Davis testified to last Friday. The contractor and workmen were warned to exercise all possible care in excavating not to strike the pipe, but we saw that in a few cases inadvertently a tool did strike the pipe and it is very apparent when there is a fresh tool mark that it is a fresh tool mark, so they are easily identified as distinct from corrosion.

The Trial Examiner: Do these workmen remove all of the dirt from around the pipe or do you do that when you make the inspection?

The Witness: They remove all of the dirt from around the pipe and underneath the pipe so the inspector can get underneath to look at it.

The Trial Examiner: Can they do that without disturbing this enamel coating on the pipe?

"*The Witness:* No, the instructions were to remove the enamel coating from the 3-foot section in the center of the inspection hole, but not to disturb the enamel coating in the balance of the hole.

"*The Trial Examiner:* I see. That is, where you made your inspection as to the condition of the coating?

"*The Witness:* Yes, sir. The removal of the enamel is a very hard job. It takes quite a lot of time to get it off. It is hard and has to be chipped off and it takes a couple of workmen an hour or two to get it off, even in the 3-foot section. The final operation is with paint remover to remove the last of it, the primer coat which is underneath the enamel.

"*The Trial Examiner:* I see."

(Vol. 25, pp. 3493-3495.)

Further as to the method of inspection employed by him, he testified:

"Q. Mr. Hancock, the method of inspection that you employed in connection with the examination of main line and branch line compressor stations and other equipment, is that the standard practice employed by gas companies in determining conditions for purposes of maintenance and conditioning?

"A. As to being a determination of observed conditions, I think it is; as to the details of how the inspection is made, there is perhaps considerable variation between the methods employed by one engineer or another engineer. I have seen different engineers approach the same problem from different standpoints and usually arrive at somewhere near the same result.

"Q. In the companies with respect to whom you gave consulting advice and which you have been called upon to give such advice as to properties, is this the method you have used, not only in rate cases but in cases where the company is simply seeking facts for determining the necessary maintenance and conditioning?

"A. That is right. I felt in approaching the problem of this case, as well as other cases, I would be deceiving the Commission if I adopted a standard in determining the per cent condition for the purposes of the case which was different to the standard which I customarily employed for determining the condition of the pipe for use by the company.

"Q. And you have made no such departure in this case?

"A. I have not.

"Q. You have been accustomed to making just such inspections for many years, have you not?

"A. Yes, sir.

"Q. And this is the procedure that you follwed in such inspections over a term of years?

"A. Yes, although I should say that I believe that the accumulative experience over a period of years has been helpful in improving the appraisal of conditions which I have arrived at in this case.

"Q. You have been responsive to both experience and study in that respect?

"A. I have tried to be."

(Vol. 25, pp. 3517, 3518.)

Hancock was extensively cross-examined as to his procedure and method of inspection, and his conclusions, by detailed inquiries and answers with respect to all statements and information embodied by him in the inspection sheets (Ex. 108, 109, 110). A number of such sheets were gone over in detail by Commission counsel with the witness. Excerpts from and the substance of various portions of such cross-examination and of his direct examination are herein abstracted as follows (Vol. 25, p. 3424, *et seq.*):

The following cross-examination is indicative:

"Q. And then in arriving at your per cent condition, either pipe or coating or both, let's take Sheet 5. That shows the date laid, September 29th. 'Location Data: 65 minutes north of culvert; soil, sandy clay and loose rock, no vegetation; in shoulder of gravel road.'

"What does that indicate to you?

"A. That indicates that the place of inspection was 65 feet north of a culvert and that was put in in order to identify the location of the hole by some local landmark in addition to the station number which appears at the top of the sheet.

"Q. What does the phrase 'no vegetation' indicate to you in connection with that inspection?

"A. That indicates that there were no roots in and around the pipe which would have a particularly deteriorating effect on the coating.

"Q. In other words, where there is an absence of vegetation the coating is not as adversely affected as it probably might be if there were vegetation present?

"A. That is generally true. The effect of the roots on the coating is largely a mechanical effect. If there are large roots in the vicinity of the pipe which is covered with a thick bitumastic coating, the roots may be impressed into the coating and thereby having a deteriorating effect upon the protective value of the coating.

"Q. So that in this instance was absent in connection with that particular inspection.

"A. That is right.

"Q. And what does the phrase 'sandy clay and loose rock' indicate to you?

"A. In connection with the factors to be taken into consideration in arriving at your per cent condition, that indicates two things: First, the presence of the sandy character of the soil would be comparatively easy on pipe from a corrosive standpoint. Some of the best conditions reported on this entire inspection are in the sandy soil areas, and that is generally true over the entire country.

"The phrase as to loose rock would be of value particularly from the appraisal of the condition of the coating. The presence of rock under a heavy load of soil is quite deteriorating to a coating. The rock presses into the coating and is very hard on the coating and reduces its protective value, and that relates to the phrase below, 'heavy soil stress marks.'

"Q. That is under pipe coating?

"A. Yes, sir.

"Q. Now, this item doesn't appear on Sheet 5, but what does the fact that some amount of alkali was found in the soil at the inspection place indicate to you?

"A. The presence of alkali would indicate a certain degree of soil corrosion. The corrosion of steel pipe largely proceeds in accordance with the electrochemical theory of corrosion or at least that theory explains most of the phenomenon which we observe and the presence of alkali in the soil and in the water contained in the soil would promote the corrosive action.

"Q. Does the presence of alkali promote corrosive action more readily or less quickly if there is also moisture present?

"A. Generally speaking, there would be no corrosion in the absence of moisture.

"Q. But where there is moisture, the more moisture there is present with alkali the more apt there would be corrosion brought about?

"A. That is correct.

"Q. All right. I believe on Sheet 5 there is no indication of alkali present and the percentage condition of that pipe

line indicated is 99 per cent. On Sheet 7 under 'Location Data' it shows 'soil—sandy clay, loose rock and alkali. In shoulder of paved road. Dry on top and wet in bottom of hole.'

That shows installation date or date laid being September 1929. I see you also have a 99 per cent condition of that pipe, don't you?

"A. That is right.

"Q. Why?

"A. The bitumastic covering on inspection M-7, Sheet 7, was in much better condition than the bitumastic covering on M-5, Sheet 5.

"Q. Was that why you arrived at that conclusion?

"A. That is probably the reason for the condition of the pipe, and in turn the condition of the pipe is the reason for us arriving at the conclusion.

"Q. Well, to get to the old expression, which came first, the chicken or the egg?

"A. Of course, the corrosive condition came first. That was there before the pipe line was laid. The pipe line was then laid and the corrosive condition came next and the inspection came last?

"Q. No the per cent condition came last, didn't it? Is that correct?

"A. That is probably more correct, yes, sir.

"Q. I also note as between those two is this part of the human element that enters into it, that they are both 99 per cent condition; Sheet 5 shows two pittings, one large and one small, and Sheet 7 shows no pittings whatsoever.

"A. That is right. M-7 by strict standard of pipe appraisal should be rated at 100 per cent, but in the case of inspection in M-7 we noted that there was some mill roughness at the top and bottom of the pipe between .002 inches and .005 inches deep, and in no case where I can recall was there any indication of defects, you might say, in the pipe, have I gone so far as to give it 100 per cent condition. In certain cases I have given it 100 per cent condition where there was not only no corrosion observed at the time of inspection but there were no defects of any character.

"Q. All right.

"A. I might further explain the defects, the defects re-

ferred to being mill defects existing at the time of the original installation and they have no connection with deterioration after construction.

"Q. All right, now, let's make another comparison.

"Q. On Sheet 8 you have 99 per cent condition with quite a number of pittings, pittings generally in small area. How do you account for that close relation to per cent conditions with all of that pitting present?

"A. The depth of the pitting is almost negligible in relation to the thickness of the pipe and the effect on the strength of the pipe would in my opinion be negligible. As a matter of fact, in giving it 98 per cent I believe I have understated in the case of inspection in M-8 the condition of that pipe.

"Q. Well, now, you say that you understated it, the second time you think you understated it. How about the statements with reference to coating? Have you ever understated any of those?

"A. Yes, I have. I think I can say that on the coating I have understated it to a greater extent than I have on the pipe.

"Q. Why did you do that?

"A. Much of the protective coatings which were installed at the time of this construction were in the development stage, both as to character of material and the methods of application. In many instances we observed coating installations which were not in good condition from a protective standpoint but which in my judgment was not due to deterioration since construction but due to inferior construction as compared to present standards of construction. What I was trying to do was to relate the condition of the coating to its condition when it was installed. I have the very definite conviction that I have unconsciously as an operating man given some weight to lack of protection arising from construction difficulties when that lack of protection has not arisen from deterioration since construction.

"Q. Well, do you know, or—strike that.

"How are you able to determine at all when any of this protective coating has begun to either deteriorate or become broken or have any vegetation become imbedded in it, or when any rock or soil dents were made in the original impression?

"A. Do I understand that you are asking me how I know when that occurred?

"Q. Yes.

"A. Of course, I do not know exactly when it occurred, but having inspected a great many pipe lines of various ages and at different times during their elapsed life, I have an opinion as to that.

"As soon as the earth is back-filled and the rocks and dirt and other material in the back-fill is thrown in on the pipe and the coating, it is my opinion that the soil stress marks begin to occur very shortly. In fact, I believe they occur during the time which we call the seasoning period of the back-fill. When the back-fill seasons and becomes settled and consolidates itself with the undisturbed soil on each side of the ditch, then there is not as much weight on the pipe and the coating as there was in the original installation when the entire weight of the back-fill was pressing down or capable of sliding down and imposing its weight directly on the pipe; so I feel that the soil stress marks should in any strict appraisal of conditions be considered as part of the original construction, but in making this examination I have the feeling that I have judged the per cent condition of the coating on a basis which gives some weight to that deterioration which took place at the time of construction.

"Q. Then, as you state, in the light of your experience in judging pipe in relation to elapsed time, age, and so forth, you do have to take that into consideration to arrive at your conclusion and did do so?

"A. You merely take it into consideration in explaining what you see but not in evaluating what you see.

"Q. You take it into consideration in explaining what you see and not in evaluating what you see?

"A. That is correct.

"Q. How are you going to separate the two?

"A. That is so simple that I find it hard to explain.

"Q. You can erase the one entirely when you reach the evaluation stage?

"A. Yes. I might explain it in this way: If you emerged a piece of pipe in an acid bath and another piece of pipe in distilled water, and you went back later and inspected those pipes, you would see what the condition of the pipes was and if you knew it was acid, that would merely explain

what took place, but it wouldn't have any bearing on what you saw as having taken place. You could make the same observation on the condition of the pipe if you didn't know what took place.

"Q. But you did have before you and took into consideration for your observation, as you say, the factors with reference to the age, or, rather, the date and length of time these sections of pipe with that coating had been in place and in service?

"A. We knew, of course, the date when the pipe had been installed. In fact, it may have been on the sheets, probably was, but even if it hadn't been on the sheets we knew when the pipes were installed.

"Q. All right, now, going back to your past experience in connection with making similar inspections, I wish you would explain exactly what factor with reference to elapsed period of time during which the particular service or line was installed, you gave consideration in so far as the first step of your inspection was concerned, and where did you stop giving consideration to it?

* * * * * *

"Q. None? Then why did you say in connection with your past experience you gave consideration to the elapsed period of time the service had been installed?

"A. I testified that I gave no consideration to the elapse of time in arriving at the conclusion, because depreciation is not a function of time. I stated that we knew what the lapse of time was as a matter of interest, and as a possible explanation why the particular conclusion was arrived at.

"Q. As a possible explanation?

"A. Yes, sir.

"Q. And what did you say you found depreciation to be? Not the function of time?

"A. Depreciation is not a function of time.

"Q. It is not and it has no relation whatsoever to the element of time?

"A. Yes, it has a certain relation but it is not a direct function of time.

"Q. In what respect does it have an indirect relation or what relation does it have?

"A. It may have a very limited relation; it may have a very extensive relation, and it may have a varying relation

from time to time. For example, if a piece of pipe was in service under ideal conditions, buried in dry sand or under some other condition where the corrosive action was extremely slow or absent, time would have a very slight relation to depreciation of that pipe. On the other hand, if it was in a corrosive soil and a wet soil, the longer the time it was exposed the more the depreciation would be; however, even in the latter set of circumstances which I have just described, there might be variations in the intensity of corrosion; there might be and are dry periods and series of dry years; there might be changes in the cathodic protection of the line; there might be changes in earth currents from electric railway systems; there might be changes in drainage conditions; there might be and are other pipe lines or other underground structures laid in the vicinity, which would have an effect on the pipe line which I am using as an example.

"Q. What consideration did you give this in your determining of the per cent condition?

"A. None."

(Vol. 25, pp. 3444-3454.)

Referring to one particular inspection in which the witness gave a 95% condition to the coating and a 99% condition to the pipe itself, he was asked by counsel for the Commission to explain such a result, which he did as follows:

"A. That is a very usual conclusion to arrive at, which I will explain if you want me to.

"Q. All right.

"A. My pipe line is installed, protected with bitumastic or similar hot enamel coating; it goes through several phases of deterioration. The first phase consists of a deterioration of the coating and if the coating is good or fairly good, the pipe deteriorates very little during the first phase.

"The second phase of deterioration following the breaking down of the coating or the disappearance of the coating, will consist of more rapid deterioration of the pipe.

"The third phase will consist of a slowing up of the pipe deterioration due to the protection gained from the deposition of the product of corrosion on the surface of the pipe

and providing a certain protective coating for the pipe. When a pipe becomes covered with a heavy scale coating the scale coating consisting of iron oxide and portions of the soil which are in that immediate vicinity, it slows up the process of corrosion to a considerable extent.

"Q. Well, your element of time comes into the picture again, doesn't it?

"A. As merely explaining what happened.

"Q. As merely explaining what happened?

"A. Yes, but not necessarily being a direct function of what happened."

(Vol. 25, pp. 3456-3457.)

Also on cross-examination, to test the witness, he was given, first, Sheet A-6 and later Sheet A-10 of Exhibit 109, to recalculate on the witness stand the per cent condition of the pipe shown on these two sheets, from the sheets themselves. The lower portion of the sheets, containing the per cent condition entered thereon by the witness at the time of his inspections was in each instance folded under, so that the witness could not see the inspection report of per cent condition previously made by him. The witness, on re-examination of the sheets in question, gave on his recalculations figures practically identical with the figures entered upon his original inspections. The per cent condition of pipe originally entered on Sheet A-6 was 74 per cent, and as given on his recalculation on the witness stand was 72 or 73 per cent. The per cent condition of pipe reported originally on Sheet A-10 was 93 per cent, and as given when recalculated during the hearing was 93 or 94 per cent (Vol. 25, pp. 3521-3522, 3524-3525).

As to the inspection and determination of present per cent condition of the buildings, foundations, machinery and equipment, at the Wellington and Arvada Compressor Stations (Ex. 107), such inspections and determinations were made by the witness Hancock personally, beginning November 19, 1940 (Vol. 25, pp. 3501, 3516-3517).

He testified, on cross-examination, in arriving at the per cent condition of building and foundations of the Wellington Compressor Station, he examined the exposed portion of the foundation, steel work in the frame of the building, steel

sheets covering the building, and the paint, and gave the entire structure, including the foundations, a single over-all per cent condition (Vol. 25, pp. 3496-3498). The same method was used in connection with the Company cottage at Wellington, after inspection of foundation, siding, shingles, porches, general construction and general condition (Vol. 25, pp. 3499-3500).

With respect to the compressor station equipment, in addition to personal observation and examination he considered certain operating data made available to him with respect to the wearing parts in the equipment at the Wellington and Arvada stations. This information consisted of measurement of the extent of wear on wearing parts and was obtained from the station records. It is kept on a diagram of the power and compressor cylinders showing the extent of wear on the top and bottom and front and back of each cylinder (Vol. 25, pp. 3433-3434).

Hancock, engineering consultant of the Company since its organization, testified he did not participate in or have knowledge of the determination in New York of the annual accruals to be entered on the Company's books under the Reserve for Depreciation (Vol. 25, p. 3470).

Cross Examination.

By Mr. Lange:

Q. Mr. Hancock, what is your present position with the Gas Advisers, Inc.?

A. President.

Q. President?

A. Yes.

Q. And where does Gas Advisers, Inc. have its office?

A. 60 Wall Tower, New York City.

Q. 60 Wall Tower, New York City?

A. Yes.

Q. Exactly what is the difference in character of service that Gas Advisers, Inc. renders in comparison with Petroleum Advisers, Inc.?

A. There is no difference in the certain classes of services rendered but there is a difference in other classes. The accounting, purchasing, financial, budgetary, and services of that character are rendered in substantially a similar

manner by the Gas Advisers, Inc. and Petroleum Advisers, Inc. The geological services, for example, are rendered by Petroleum Advisers, Inc., it having a geological staff, and when the Gas Advisers, Inc. desire to furnish geological services to member companies it calls on Petroleum Advisers, Inc. to furnish the personnel required to render that service. It is the same way when Petroleum Advisers, Inc. desires or is required under its contract to render gas engineering service to a member company and having no gas engineering department or staff of its own, it employs Gas Advisers, Inc. to render that portion of the service to its member companies.

Neither Gas Advisers, Inc. or Petroleum Advisers, Inc. maintain a staff of inventory and valuation experts. For that reason when such services are required by the member companies of either Gas Advisers, Inc. or Petroleum Advisers, Inc., Electric Advisers, Inc., is called upon to furnish that class of service.

Q. Now, in connection with this present proceeding, which companies supply the personnel for the rendering of services?

A. Petroleum Advisers, Inc. supplied the personnel indirectly through Gas Advisers, Inc. or by calling on Gas Advisers, Inc. to supply the personnel. It is in regard to the gas engineering service I am referring to.

Q. You are President of Gas Advisers, Inc., aren't you?

A. That is right.

Q. What position, if any, do you hold, first of all with the Petroleum Advisers, Inc. and the Electric Advisers, Inc.?

A. None.

Q. Do you hold any official position with any other company?

A. Yes.

Q. Which company or companies?

A. Some of the operating companies.

Q. Can you give us the names of the operating companies?

A. Yes.

Q. Please do that.

A. Arkansas-Louisiana Natural Gas Company—

Q. And the position you hold in each company as you name it.

A. You mean by that as to whether I am an officer or not?

Q. As to whether you are an officer or director or have any official position.

A. Arkansas-Louisiana Natural Gas Company, Vice President and Director; Arkansas Natural Gas Corporation, Director; Wentworth Natural Gas Corporation, Director; Republic Light, Heat & Power Company, President and Director; the Dominion Natural Gas Company, Ltd., Vice President and Director; United Gas and Fuel Company, Ltd., Director; Hamilton Byproducts and Coke Company, Ltd., Director; Suburban Gas Company, Director; United Fuel Investments Company, Director; Penn-York Natural Gas Corporation, Director. That is all.

Q. Now, the three companies, Petroleum Advisers, Inc., Gas Advisers, Inc., and the Electric Advisers, Inc., are the successor companies which were originally Henry L. Doherty & Company? Is that correct, or exactly what is the status of it?

A. They are not successor companies. They were newly organized and formed companies as of January 1938 for the purpose of performing some or all of the servicing duties performed by Henry L. Doherty & Company as fiscal agent of Cities Service Company prior to the fall of 1935, and performed directly by Cities Service Company from the fall of 1935 to January 1, 1938.

Q. Now, then, what is the affiliation that exists between those three companies and the member companies, the so-called member companies?

A. The relationship?

Q. The corporate affiliation.

A. As to Gas Advisers, Inc., the entire capital stock is owned by the member companies, it being a mutual service company as defined in the Public Utility Holding Company Act of 1935.

Q. What are the member companies in that group?

A. The Kansas City Gas Company, the Wyandotte County Gas Company, the Gas Service Company, the Arkansas-Louisiana Gas Company, the Republic Light, Heat & Power Company, and the Dominion Natural Gas Company, Ltd.

Q. Which of those companies are subsidiaries of Cities Service?

A. The Dominion Natural Gas Company and the Republic Light, Heat & Power Company are direct subsidiaries. The Arkansas-Louisiana Natural Gas Company is a subsidiary of the Arkansas Natural Gas Corporation which is in turn sometimes called a subsidiary of Cities Service Company. The Kansas City Gas Company, the Gas Service Company, and the Wyandotte County Gas Company are not subsidiaries of Cities Service Company in the sense that Cities Service Company has any voting control over the stocks of these companies, these stocks being trusted.

Q. Where the trusteeships exist, what is the nature of the relation of the trusteeship in so far as Cities Service Company is concerned? What is the nature of that trusteeship?

A. That was an arrangement made entirely by Cities Service Company and I had nothing to do with it.

Q. You don't know where the beneficial ownership of the stock rests?

A. No, sir.

Q. When was that arrangement made? Was it after 1935?

A. Yes, sir.

Q. What was the purpose of that arrangement?

A. I have no idea—I will amplify that. I might say I have hearsay knowledge of it.

Q. What do you know about that?

A. I know nothing of record about it.

Q. You say you don't know anything of record about it. What do you know about the resaon for that?

A. I know nothing about the reason at all.

Q. Nothing at all?

A. No, sir.

Q. What about the other group the Petroleum Advisers, Inc.? Which are the member companies in that group?

A. I will try to name some of them. I am not concerned with the operation of that company and hence I am not entirely familiar with it, but I do know that Cities Service Company of Pennsylvania, Cities Service Oil Company of Delaware, Power Patents Company, Arkansas Fuel Oil Company, Arkansas Pipe Line Company, Cities Service Gas Company, Colorado-Wyoming Gas Company, Penn-

York Natural Gas Corporation, are member companies, and there are perhaps some other companies which I cannot recall just at the moment.

Q. And of those companies which are subsidiaries of Cities Service in the Cities Service group?

A. They are all subsidiaries, either directly or indirectly. (Vol. 24, pp. 3397-3403.)

* * * * *

Q. Now, Mr. Hancock, referring to Exhibit No. 107, on what page do you refer to the reports included in Exhibit No. 108?

A. Page 9.

Q. Page 9?

A. Yes, sir, at the top of the page.

Q. And the report that you have as reflected in Exhibit No. 108 includes what items—rather, what does that report embrace?

A. The property which is covered by the inspections reported in Exhibit No. 108 includes the main lines and branch lines of the company.

Q. And those inspections, as you have just stated, were made between September 18, 1939 and September 27, 1939?

A. That is correct.

Q. And the way you went about making that report is partly reflected on Page 6 of Exhibit No. 107 where you give the definitions of these various abbreviations used in connection with determining pit depths?

A. That is right.

Q. Those are at the present reflected on each of the sheets, 1 through 83 of Exhibit No. 108?

A. That is right.

Q. All right. Let us, for instance, take your first sheet on Exhibit No. 108. Inspection M-1, exactly where is that particular section of the pipe line?

A. That is on the extreme south end of the pipe line.

Q. Can you indicate the termini of those pipe ends that are included in that inspection?

A. The inspection is 4,150 feet west of the beginning of the Colorado-Wyoming Gas Company's pipe line system at Arapahoe measuring station.

Q. Where does it end? It begins right immediately west of the Arapahoe station and ends where?

A. Well,—

Q. Forty-one hundred and—

A. My answer is that the point of inspection was 4,150 feet west of the Arapahoe measuring station.

Q. That is the point of inspection, but what section of the line is encompassed in that inspection?

A. Three feet.

Q. At what section of the line did you—strike that.

What proportionate part of the investment did you attempt to encompass in that inspection?

A. As testified previously, each inspection hole represents approximately $18,000 of investment.

Q. And can you approximate the distance along the line that that would be on this particular section?

A. On the 10-inch main line the distance between inspections is approximately 8,300 feet.

Q. Approximately 8,300 feet between inspections?

A. Yes, sir.

Q. What is the difference between inspections on the next section of the main line, the 8-inch main line?

A. On the 8-inch main line it is approximately 11,500 feet.

Q. Approximately 11,500 feet between inspection points?

A. The distances which I have just given you are the distances arrived at in the original schedule of inspection and we departed from them to some certain extent for reasons explained in previous testimony.

Q. That is right. Now, the 6-inch main line?

A. The 6-inch main line, the distance between inspection points is 13,500 feet.

Q. 13,500 feet?

A. Yes.

Q. And that takes care of all the main line distances, doesn't it?

A. Yes, sir.

Q. Now, with reference to the laterals?

A. The same spacing would be applicable to the 8-inch and 6-inch laterals as has been testified to in regard to the spacing on the main line. The 4-inch laterals the spacing between inspection points would be approximately 19,700

feet. I don't have a note before me regarding the spacing on the smaller sized lines.

Q. And the total inspections made of the main line, as well as laterals, included in Exhibit No. 108, are 83 in number?

A. Correct.

Q. That is, there are 55 inspections covering the main line? Is that correct?

A. Yes, sir.

Q. And the remaining 28 cover the laterals, is that correct?

A. Correct.

Q. Now, then, going back to Sheet 1 again, I notice that on every one of the sheets, Sheets 1 through 83, is a printed item "Date Laid" after which in each instance a month and year has been inserted is that correct?

A. Yes, sir.

Q. I understand that you did not take into consideration the time of installation of any of these various sections of pipe, or did you?

A. I did not.

Q. You did not take that into consideration?

A. No, sir.

Q. Well, now, the material that is included in this sheet, as I understand it, had a definite purpose, did it not, in enabling you to arrive at your final conclusion in each instance?

A. Not all of it.

Q. Why was it necessary to have the date of installation or date laid, as you put it, on each of these sheets if that particular information was not taken into consideration in the arriving of your conclusions in each instance?

A. I thought I might be asked what the date was.

Q. You thought you might be asked what the date was?

A. Yes, sir.

Q. That is the only purpose it had in being included in this sheet?

A. Yes, sir.

Q. And you gave no consideration to the time of installation or the time that that piece of line has been in service?

A. No consideration whatsoever.

Q. None whatsoever?

A. No, sir.

Q. And is that same situation true with reference to the same character of information on the sheets in Exhibit No. 109, your compressor station equipment?

A. It is.

Q. And didn't you state Friday that you didn't just observe the compressor station physically but gave consideration to certain operating data that you made available to yourself on that particular item of equipment?

A. That is correct, as to wearing parts.

Q. As to wearing parts?

A. Yes.

Q. Where did you get that information and what did it consist of?

A. It consists of measurement of the extent of wear on wearing parts and was obtained from the station records.

Q. Obtained from the station records?

A. Yes, sir.

Q. In what form is that information kept at the station?

A. It is kept by the superintendent of the station.

Q. In what character of record book?

A. It is kept on a diagram of the power and compressor cylinders showing the extent of wear on the top and bottom and front and back of each cylinder.

Q. And that record also gives the installation date or dates, doesn't it?

A. I don't believe it does.

Q. Where did you get this information that you have on the sheets in Exhibits Nos. 109 and 110?

A. As to pipe lines?

Q. No, these compressor stations listed on the sheets in Exhibits Nos. 109 and 110.

A. As to pipe lines or the compressor station?

Q. Exhibit No. 110 as to the pipe line and compressor station.

A. That was obtained from the company records in the Denver office.

Q. The company records in the Denver office?

A. Yes.

Q. And going back to Exhibit No. 109, the Wellington compressor station, the date on there was obtained from the station records of the company?

A. That is right.

Q. And that item was put in—or on each of these sheets at the time these other items were put on each of these sheets, was it not?

A. Not necessarily.

Q. Well, it appears from the copies that I have that these apparently were made at the same time. What was the practice that you followed in compiling these sheets?

First of all, in Exhibit 108, was all of this information that appears on this sheet, aside from the printed part, was that inserted at one time until you got down to "Per Cent Condition"?

A. I think so, yes.

Q. And then in each of these instances you had charge of or supervised the preparation of each of the sheets, didn't you?

A. Correct.

Q. And in connection with—well, let's take the first one. You didn't appear on that one, but you had supervision over the preparation of that one, didn't you?

A. That is right.

Q. And all of this information that appears on there was before you when you finally reached the decision that you came to as to the per cent condition?

A. That is right.

Q. All right, what did you do after you had one of these sheets before you and the time came for you to determine this per cent condition at the bottom of the sheet? When was that decision made?

A. It was made at the time of the inspection.

Q. At the time of the inspection?

A. Yes, sir.

Q. After all of these items had been inserted, you then made these determinations as to the pipe per cent and coating per cent?

A. That is right.

Q. And put them on each sheet as you finished your inspection?

A. That is right.

Q. What mathematical relation does; for instance, this percentage of 99 per cent on Sheet 1, have to the information that appears above it?

A. The 99 per cent appearing on Sheet No. 1 of Exhibit 108 is the ratio of the pressure which the pipe in its present condition is capable of withstanding without showing any distress or distortion or permanent set less the maximum operating pressure, to the pressure in pounds per square inch which the same pipe in new or original condition will stand without showing distress or distortion or permanent set less the maximum operating pressure, in the opinion of the inspector.

Q. In other words, the percentage of 99 per cent pipe condition is purely a judgment figure ultimately? It is not calculated out?

A. It is a judgment figure based on experience.

Q. Based on experience?

A. Yes.

Q. It isn't the result of a mathematical calculation?

A. It is the result of a viewed depreciation of the pipe under inspection related in the opinion of the inspector to the condition of new or original pipe.

Q. But, as I say, it is ultimately a judgment figure?

A. It is a judgment figure.

Q. And the same applies to the coating per cent?

A. That is right.

Q. On this page, as well as on the others in that exhibit?

A. It is a judgment figure.

The Trial Examiner: Pardon me a moment, Mr. Lange. Do I understand, Mr. Hancock, that this per cent figure here, for example, on Sheet 1 of Exhibit 108, represents the per cent of condition figure fixed by the inspector?

The Witness: That is right.

The Trial Examiner: That is not your figure?

The Witness: In this particular case it was fixed by Mr. Stoddart.

The Trial Examiner: I see.

The Witness: Who was working under my direction and who accompanied me on all the other inspections which I made.

The Trial Examiner: All right.

By Mr. Lange:

Q. In each instance the inspector affixed those percentages on the sheets?

A. That is right.

Q. And in a number of instances that was done by Mr. F. W. Stoddart?

A. That is right.

Q. And in a great many of those instances you were not marked present as an observer?

A. That is right.

Q. In what fashion then, were you able to check the accuracy of his conclusion?

A. In the first place, he worked under my direction, and followed the methods and procedures which I outlined. In the second place, both Mr. Stoddart and I have worked together on many previous inspections and on basic tests of pipe line material on which we ground our judgment as to the conclusions presented in this report.

Q. Well, then, if you were not present at any of those—strike that.

At any of those inspections at which you were not present, did you ever reach any different conclusion as to per cent condition than that arrived at by Mr. Stoddart?

A. No, sir.

Q. You did not?

A. No, sir.

Q. In what fashion did you go over any particular sheet? Let's take one where you weren't present. Let's take the first one. You weren't present at that inspection?

A. No, sir.

Q. What did you do in order to satisfy yourself that 99 per cent for pipe and 95 per cent for the coating correctly reflect that condition?

A. I examined and studied the sheet and saw nothing in the report of corrosive conditions and measurements of pits which would lead me to arrive at a different conclusion. I am not able to check an inspector's conclusion exactly by reason of a written report, but I believe that I could detect any wide deviation from what I believed it to be the correct conclusion, and I have concluded in this instance that Mr. Stoddart's judgment as to these per cent conditions is substantially in agreement with my own.

Q. All right, would you be able, for instance, to take one of these inspection sheets—strike that.

Would you be able to take one of these inspection sheets at which inspection you were not present, eliminate the date laid as well as the pipe per cent and the coating per cent, and arrive at a per cent condition of the pipe and coating?

A. I believe I could with certain limitations in mind.

Q. What limitations?

A. I could probably not arrive at the same conclusion to a high degree of exactness on individual inspections, but taking a number I would probably arrive at very close to the average.

Q. Taking a number?

A. Taking a number.

Q. Didn't you state that each of these inspection sheets stands on its own bottom and the per cent condition is arrived at by the inspector right then and there?

A. That is right.

Q. Standing on its own?

A. That's right, but in attempting to check against another inspector, both of us being human, I believe that my judgment would differ perhaps in one direction in one test and in another direction in another test, and probably on the average would come closer than on individual tests, although it may come fairly close even on some individual tests.

Q. Just may happen to strike that way?

A. Yes, or it may be a little high or a little low.

Q. Well, how about one that you yourself have made where the date laid as well as the per cent of pipe and per cent of coating were eliminated? What would you be able to do with one of those?

A. The same answer applies.

Q. In other words, in that situation, then, you could not take that one inspection sheet and arrive at your per cent condition with the accuracy that you say you have on that particular inspection sheet?

A. No. I believe I could arrive at a more accurate determination with the pipe in front of me than I could with

the description in front of me, but I could do it with a fair degree of accuracy with only the description.

Q. With only the description?

A. Yes, on the average.

Q. You would have to have how many of these in order to average out?

A. You would get the closest average by taking all of them and a corresponding chance of not averaging by taking any number which is less than the total.

Q. Very well. Here is one in Exhibit 110. That is on the Arvada compressor station. What is the per cent condition of that in the absence of any information as to the time laid or the per cent condition indicated by you?

A. All right, sir, give me about five minutes and I can give it to you.

The Trial Examiner: Mr. Lange, can you proceed with some other line so that Mr. Hancock might make that calculation at the usual recess?

Mr. Lange: Very well.

Q. Now, with reference to the statement that you just made on the pipe line inspection where you did not make the inspection but would have to check it yourself—let's take Sheet No. 5 on Exhibit 108. Before we go into the matter of the per cent condition or any other factor on that sheet, I want to ask you this general question:

What character of information was available to you as to the soil conditions that you have under, "Location Data" on this sheet?

A. The observation of soil conditions is recorded on each inspection sheet under the caption of "Location Data".

Q. And what consideration did you give to that in arriving at your per cent condition?

A. None.

Q. None?

A. None.

Q. Well, then, that is another item that is unnecessary on each of these sheets?

A. That is right.

Q. Well, why?

A. It is unnecessary from some standpoints.

Q. From what standpoints?

A. From the standpoint of arriving at the conclusion of the condition of the pipe.

Q. Well, then, why has it been put in this inspection sheet in each instance?

A. Because I wanted to know as I made this inspection, what factors had contributed to the condition of the pipe as observed. That is very useful information.

Q. What factors had contributed?

A. Yes, sir.

Q. Over what period of time?

A. I wouldn't know what period of time.

Q. Would there be any way for you to limit the time that those factors had contributed?

A. No, sir.

Q. And that is the purpose of your including location data with reference to soil conditions and other items under that particular heading in these sheets?

A. That is right.

(Vol. 25, pp. 3428-3444.)

Q. Now, then for instance, on Sheet 18 where you have arrived at 99 per cent condition, the Location Data there speaks of "sandy loam soil—in low ground near small stream—water in hole. Pumping during inspection—heavy back-fill." That is a pretty bad location, not just spasmodic, isn't that true? Doesn't it indicate to you just a spasmodic location?

A. No, not a spasmodically bad location. I might explain it in this way: It is probably in this location fairly permanently wet—

Q. That is right.

A. —and it is a very deep point, being 55 inches from the top of the ground to the top of the pipe. In all probability there is a greater exclusion of oxygen from the pipe line in this location than in many of the other locations. It is also probable that more care was given in installing the protective coating at this point, and that is evidenced by the fact that there were no rust stains evident under or over coating, or in the soil, which would indicate that at that point we did not observe what we call holidays in the coating, which were observed at many other points.

Q. What do you mean by "holiday" in that particular phrase?

A. It might be described as a pin hole through the coating.

Q. Caused by what?

A. Caused by gas bubbles or something like that at the time of the original installation, in which, as previously testified to, we have rated the coating down when we observed the rust stains over the coating, when as a matter of fact these pin holes or holidays undoubtedly occurred at the time of installation.

Q. You have rated this coating down in spite of the fact that none of them appear? "Bitumastic—good general protection—no rust stains evident under or over coating or in soil."

A. The rating down comes from the part you have omitted.

Q. "Heavy soil stress marks"?

A. That is right.

Q. Were any of those penetrated?

A. I can't tell from this brief description, but it is very probable that some of the soil marks or rock marks penetrated quite deeply into the coating.

Q. But you have a very good condition there?

A. That is right.

Q. And you still only gave it a 95 per cent condition?

A. That is right.

Q. And why did you give that as low a per cent condition with reference to the coating there and a 99 per cent condition with reference to the pipe that has been installed—strike out "installed"—that has been in place in that low ground?

A. That is a very usual conclusion to arrive at, which I will explain if you want me to.

Q. All right.

A. When a pipe line is installed, protected with bitumastic or similar hot enamel coating; it goes through several phases of deterioration. The first phase consists of a deterioration of the coating and if the coating is good or fairly good, the pipe deteriorates very little during the first phase.

The second phase of deterioration following the breaking down of the coating or the disappearance of the coating, will consist of more rapid deterioration of the pipe.

The third phase will consist of a slowing up of the pipe deterioration due to the protection gained from the deposition of the product of corrosion on the surface of the pipe and providing a certain protective coating for the pipe. When a pipe becomes covered with a heavy scale coating the scale coating consisting of iron oxide and portions of the soil which are in that immediate vicinity, it slows up the process of corrosion to a considerable extent.

Q. Well, your element of time comes into the picture again, doesn't it?

A. As merely explaining what happened.

Q. As merely explaining what happened?

A. Yes, but not necessarily being a direct function of what happened.

Q. Well, you distinguish between direct relationship and indirect relationship? To what extent is that present, that indirect relationship to the time element?

A. I don't believe I understand your thought.

Q. What consideration did you give to the time element?

A. None.

Q. None whatsoever?

A. None whatsoever.

Q. What about the factors that you just related as bearing indirectly?

A. I gave them no consideration in arriving at the conclusion as to per cent condition.

Q. Well, you say that situation obtaining on Sheet 18 is usual. What about the situation that obtains on Sheet 77 where you have just the reverse? You have given that pipe an 86 per cent condition with almost a perfect coating per cent. In fact, you gave that an excellent condition. That should really be 100 per cent as far as pipe coating, noting Sheet 77?

A. No, sir, I didn't rate any of them 100 per cent.

Q. You didn't give any of the coating percentages as much as 100 per cent?

A. I did not.

Q. You did give some of the pipe percentages 100?

A. I did.

Q. You didn't think each of these coating ratings where you have—like on Sheet 77 "Barrett hot enamel. Good coverage—good adherence—soil stress marks," is that what you say pulled down that rating?

A. Yes, sir.

Q. And otherwise you would have given it a 100 rating? Nothing else pulled that down, did there?

A. If it had been perfect I would have given it 100 but I didn't consider it was.

Q. You did consider some stress pipe section per cents, for instance, Sheet 81, where you give that pipe 100 per cent condition?

A. I did consider the per cent.

Q. You did consider the per cent?

A. Yes, sir.

Q. But you didn't consider any of the coating per cent?

A. Because they were not—

Q. Not a one?

A. No, sir. Many of them were zero.

Q. That is true, but I am talking about having given pipe sections 100 per cent condition and not a single of the coating ratings were 100 per cent, although in some instances there weren't any marks present at all.

A. I don't believe I recall any case—there might have been some isolated cases—but as a general rule, there were marks on the coatings.

Q. All right. You have indicated those as soil stress marks and so forth?

A. Yes, sir.

Q. Sheet 83 gives pipe coating as "Barrett hot enamel—good adherence—complete coverage. No rust under coating or in soil. Excellent condition." That only has 95 per cent, although the pipe is 99 per cent?

A. That is right.

Q. You still think there wasn't a single instance where the coating was entitled to 100 per cent condition?

A. No, I don't believe there was.

Mr. Lange, I don't believe I have finished my answer to your question on Sheet 77.

Q. Very well.

A. That is where you call attention to the fact that the coating was in better condition than the pipe.

Q. Yes.

A. Under the caption "Corrosion" there is the statements "Pits general in medium areas. Paint in bottom of pits," which would indicate that the pipe was pitted before

it was painted; that it was a piece of used pipe accounts for the fact that the coating is in better condition than the pipe, which, of course, would be an impossible condition if both had been installed at the same time.

Q. How did you, without having any of the history of that section, know that that was a piece of secondhand pipe or a section of secondhand pipe?

A. The paint was in the bottom of the pit.

Q. The paint was in the bottom of the pit?

A. Yes.

Q. Is that the way you ascertained that fact?

A. That is a very reliable method.

Q. Is that the way you ascertained it on Sheet 78, or did that indicate such a situation?

A. Sheet 77 was the one I was referring to.

Q. Yes.

A. And it is the one which I understood was the basis of your question, wasn't it?

Q. That is right. That has a statement under "Corrosion" like this: "Paint in bottom of pits." Is that the reference you are discussing?

A. That is right. The whole situation was undoubtedly more clearly discernible to the engineer when he was looking at it than this indicates, but that is a very clear indication to me that that was in his mind when he made the report because that situation occurs very frequently.

The Trial Examiner: We will stand in recess for five minutes.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

The Trial Examiner: The hearing will be in order.

By Mr. Lange:

Q. Mr. Hancock, on Sheet No. 1, going back to Sheet 1 of Exhibit No. 109, you say that 99 per cent condition of the pipe there is because of—strike out "the"—of what factors?

A. Because of the corrosion. It indicated isolated shallow pits.

Q. And even with that many shallow pits, 99 per cent condition of the pipe would reflect the correct condition?

A. That is correct.

Q. How about Sheet 22 where you haven't any pitting at all and still have a 99 per cent condition?

A. That is right. The shallow pitting on M-1 on Sheet 1 results in an almost negligible effect on the condition of the pipe. The condition of the pipe on M-22, Sheet 22, is rated at 99 per cent and is so rated because of the reference to small patches of mill roughness. The pipe is not in perfect condition but we could find no evidence of corrosion.

Q. Going back to Sheet 77 where you indicated under "Corrosion"—"Paint in bottom of pits," you say you had no information before you with reference to that pipe as to whether it was new or secondhand, but you presume it was secondhand; is that what you said?

A. That is right.

Q. You did not know as a matter of fact, that it was secondhand, that as well as those through Sheets 83?

A. I cannot say as to Sheet No. 83.

Q. Why?

A. Because I have nothing to enable me to say.

Q. Why, as to Sheet 82? I don't see any paint marks in your corrosion statement there.

A. I didn't say as to Sheet 82, but I will if you want me to.

Q. Well, what is your knowledge with reference to that? There is no paint marks shown on your corrosion statement there, are there?

A. No, sir.

Q. Well, if that was secondhand pipe, why wasn't that same indication as to paint at the bottom of the pits present?

A. You are referring to Sheet 82?

Q. Yes.

A. I don't recall that I said it was secondhand pipe as to Sheet 82.

Q. No, but I say, if it as a matter of fact were secondhand pipe, would there be any explanation under corrosion that would indicate that?

A. Well, it has a new pipe appearance. Now, whether it has been moved in location or not, I can't say, but regardless of what its history has been it presents the appearance of new pipe. I am now referring to Sheet 82.

The Trial Examiner: I don't believe, Mr. Lange, that Mr. Hancock got your original question with regard to the secondhand pipe. Would you mind restating that?

Mr. Lange: Yes.

The Trial Examiner: You named the sheets there.

Mr. Lange: Yes, Sheet 77.

Q. On Sheet 77 you give an explanation with reference to corrosion that paint in bottom of pits indicated to you that the pipe was not new pipe when laid.

A. That is correct.

Q. And why would that indicate to you that that was not new pipe when laid?

A. Because that condition wouldn't be present if the corrosion that we observed had occurred after the pipe was painted and laid.

The Trial Examiner: That was not the question I had reference to, however, Mr. Lange.

Mr. Lange: Oh, I think the one you have in mind was the question I asked whether he knew as a matter of fact—

The Trial Examiner: That's right.

Mr. Lange: —that the sections of pipe included in Sheets 78, 79, 80, 81, 82 and also 83, also covered secondhand pipe.

The Witness: It is my understanding that the Brighton, B-r-i-g-h-t-o-n, branch generally was constructed of used pipe. However, that does not mean that the used pipe, or, rather, the pipe which we inspected at each of these locations, was necessarily the original used pipe installed in this line. There may have been replacements of certain sections of pipe.

By Mr. Lange:

Q. Well, if they were replacements, what *affect* would that have on your giving consideration to the period of time that any particular piece of pipe was located in certain soil or under certain conditions, or all items that go under location data?

A. The question of possibility of replacements is just another reason why, when looking at a line which was laid in a certain year, that there can be no conclusion drawn that the pipe you are looking at was necessarily laid in that year.

Q. All right, then, how do you arrive at these three stages of corrosion that you were just speaking about? What period of time do you allocate to them?

A. I have never allocated any. That would be an impossible undertaking.

Q. Well, what period of time, then, is it attributable to each stage?

A. I don't know.

Q. Well, when does any particular time come about when they decelerate, as you say?

A. That can only be arrived at by observation as to the time when it takes place, depending on the particular conditions which exist at that place.

Q. Well, do you attempt to make a determination on an inspection as to whether the period of time has arrived or elapsed when the deceleration begins to take place with reference to corrosion?

A. No, sir, and I do not for this reason: That as soon as we know when a pipe was installed and are sure that we are now identifying the particular pipe which was installed, we now observe certain corrosion or pitting in that pipe and we look at the records and see when that pipe was installed, but so far as I know, we do not know when that corrosion started. We know when the pipe was back-filled and we know when we stuck a pick in the back-fill to dig it up to take a look at it, but we don't know when the pit started.

Q. No, but you did have to know when that pipe was installed to begin your follow-through study on that particular section of pipe?

A. No, sir.

Q. Oh, you did not?

A. No, sir.

Q. You just related that beginning with the assumption that the pipe was installed at a certain time—

A. Yes, but I meant in my answer that we did not have to know when the pipe was installed in order to arrive at the per cent condition at the present time.

Q. Well, when you did, though, assume that date for what purpose, assume the knowledge of the time of installation for what purpose?

A. As a matter of operating and maintenance information.

Q. Well, you didn't prepare this study, or did you, as a matter of operating and maintenance information?

A. Yes, those items of information are generally obtainable at no other times than these inspections for this purpose and they are very expensive to make; so naturally in the interest of economy we obtain all the information that we can at the time of the pipe line inspection for this purpose.

Q. At the time of the pipe line inspection for this purpose, in rate proceedings, are made?

A. Yes, sir.

Q. Well, then, how do you get that information when you don't have any rate case and don't have any occasion to make such pipe inspection?

A. We have to spend the money to get it.

Q. You have to spend the money to get it?

A. Yes.

Q. How do you go about getting it?

A. Dig up the pipes and looking at it.

Q. When did you do that on this system?

A. For the purpose of this inspection?

Q. Yes, other than these.

A. Doing it every year.

Q. Doing it every year?

A. Yes, sir.

Q. At what points?

A. The inspections and corresponding maintenance to which I have just referred which I will give you a few to illustrate what I am referring to, consists of 400 feet on the 10-inch main line—

Q. What main line?

A. The 10-inch main line.

Q. All right.

A. 300 feet on the 8-inch main line, 14,000 feet on the 6-inch main line, 1,000 feet on the Boulder 6-inch branch, 700 feet on the Greeley 6-inch branch, 2,800 feet on the Brighton branch, 600 feet on the Fort Warren branch, 1800

feet on the Cement branch, 1,000 feet on the Johnstown branch.

Q. When were they made?

A. In recent years, a considerable part in 1940.

Q. 1940?

A. Yes, sir.

Q. Subsequent to these in this Exhibit 108?

A. Before, during and after.

Q. Before, during and after?

A. Yes, sir.

Q. And when were there any made previous to that time, to the year 1940?

A. Every year since about 1931.

Q. About 1931?

A. Yes.

Q. Were they utilized in any other regulatory proceedings that this company had?

A. Not that I have knowledge of.

Q. Not that you have knowledge of?

A. No.

The Trial Examiner: Were these just inspections of the line, Mr. Hancock, or—

The Witness: Yes, sir; that is, for operating and maintenance purposes.

The Trial Examiner: For instance, you named there 14,000 feet, I believe, on one particular line. You mean by that that 14,000 feet of that line was inspected?

The Witness: Inspected and reconditioned. Now, there was undoubtedly a great many more inspections than at these points that I have indicated.

The Trial Examiner: But didn't those represent complete uncovering of the line rather than the pit inspection that you mentioned?

The Witness: Oh, yes. The lines which I mentioned represent the places of actual reconditioning of the line, the first step being the examination of the corrosion and the pits and the next step being the reconditioning.

By Mr. Lange:

Q. You say during all that period of time since 1931,

you say the observations have been charted or records made of them as to per cent conditions?

A. The observations have been made from time to time to determine where extraordinary maintenance was required.

Q. Well, did you have anything to do with the determination made in New York as to the rate of depreciation that the company set up on its books?

A. No, sir.

Q. That was testified to by Mr. Davis?

A. No, sir.

Q. You weren't in conference on that at all?

A. No, sir.

Q. Well, why didn't the company make use of those figures when they determined those rates of depreciation?

A. I couldn't say.

Q. What consideration did the company—

A. I might add to my last answer that generally speaking the reconditioning work to which I have referred are not replacements.

Q. They are not?

A. They are reconditioning.

Q. Reconditioning?

A. Yes, sir.

Q. Well, if the company had all that information before it, what use did it make of it?

A. They used the information to determine where and when to recondition the line.

Q. What was that last answer?

A. They used the information to determine where and when to recondition the line.

Q. For that purpose?

A. Yes, sir.

Q. And this study in Exhibit 108, is that intended to serve as some basis to indicate the maintenance—or, rather, what the company's maintenance program is to be or might be?

A. Only as a purely incidental proposition. The main purpose, of course, was to obtain the information for the purposes of this case, and the information so obtained, of course, will be borne in mind by the operating officials of the company.

Q. Well, then, the information that they obtained when-

ever they had to recondition large systems of pipe was purely incidental, too?

A. No, that was the primary purpose at that time.

Q. The primary purpose?

A. Yes, sir. There being no other purpose it would necessarily be the primary purpose.

Q. Well, when those jobs were done, what records did the company maintain on that particular work?

A. As to the cost of it, and location.

Q. Anything else?

A. I think that is all.

Q. Now, referring to your Exhibit 108 again, Sheet 23, you give the coating an 80 per cent condition.

A. That is right.

Q. Although the pipe has a 97 per cent condition and the pipe coating statement: "Bitumastic, plastic on top and bottom, slightly brittle in spots, thin coating, good bond, good coverage, no rust stain, very good condition."

A. Yes, sir.

Q. Why that low per cent condition of pipe coating?

A. I wouldn't regard it as a low per cent. The per cent which I actually gave it was rated down from the higher per cents because of the fact that the coating was slightly brittle in spots and because it was thin, again bringing up the question as to whether or not those two observations applied to original construction conditions or to deterioration which has taken place since construction. Again in this case I am of the opinion that I may have—or, rather, that Mr. Stoddart who made this inspection may have understated the actual per cent condition of the coating.

Q. May have understated it?

A. Yes, sir, but this is the per cent condition reported.

Q. Well, then, what should it have been? What do you make it?

A. Well, that's rather difficult to arrive at without having the coating in front of me.

Q. Well, you didn't have the coating in front of you at the same time—

A. I would do the same thing that Mr. Stoddart has done and I have in all of the inspections which I have reported here depreciated the coating because of observed defects in the coating which I felt might well be attributed

to original construction conditions. In other words, I have taken what I believe to be a very conservative position in regard to the coating percentages. If there was any uncertainty in my mind as to whether it was construction defects or the result of deterioration I would have assumed that it was deterioration, and that may have resulted in an understatement as to the per cent condition of the coating.

Q. Well, then, if you have an understatement of the per cent condition of the coating and this particular information gets into your company's maintenance records, then that would be an indication that the maintenance work is necessary, wouldn't it?

A. No.

Q. Why not?

A. Because nothing would be done in regard to the maintenance of the line until the corrosion on the pipe indicated the necessity of it.

Q. Oh, then where there is a high per cent of pipe condition, the company would apply any character of coating per cent condition—that low coating per cent condition would have no bearing on the company's maintenance program?

A. Absolutely not because it would be a waste of money to move in and begin to replace coating until the coating had depreciated to a point where it was resulting in pipe corrosion.

Q. So, places where, for instance, you have a 99 per cent condition of the pipe, like Sheet 27, "Pipe smooth, pits isolated, heavy tool marks, numerous spots in Sections A-B and C when cleaned out resemble pits but paint in bottom indicates they are old tool marks or mill roughness."

The fact that they are 60 per cent coating there, indicates from this sheet that there isn't any maintenance necessary at this time or until there is much more definite indication of pitting?

A. That is right. The corrosion is almost entirely absent in this particular inspection. It would cause no concern whatever.

Q. And although for another purpose, this Sheet 27 from its location data speaks of the soil being wet, sandy clay with alkali, between gravel road and fence, wheat field

near, alkali shows on surface in field. What kind of a soil condition is that?

A. That is a bad soil condition.

Q. Bad soil condition?

A. Yes, sir.

Q. And that pipe, however, is in 99 per cent condition?

A. That is right. It has evidently had very good protection.

Q. Well, that protection seems to be only 60 per cent good.

A. No.

Q. "Brittle, good bond, good cover, thin, heavy soil strain marks, few rust stains where paint is penetrated by soil or rocks."

A. You use the term where the protection is 60 per cent good, and that isn't the situation.

Q. What is it?

A. The condition is 60 per cent good.

Q. All right, the condition is 60 per cent good.

A. Yes.

Q. Explain the difference.

A. The difference is this, that if the protection was only 60 per cent good it would mean that 40 per cent of the pipe would be exposed to corrosion, but in this case where the protection is—strike that last "protection"—but in this case where the condition is 60 per cent good it means that the pipe is covered by the coating entirely but that the coating itself has depreciated to a 60 per cent condition.

Q. Yes, but you have got marks of penetration, not just depressions.

A. That's right. That is the result of the few rust stains where paint is penetrated by soil or rocks. In other words, there are some slight penetrations of the coating and the corrosion has shot through at those points, a very few points, and that causes a pitting and to a certain extent a decelerated type of pitting.

Q. Why decelerated type of pitting?

A. Because the phenomenon of corrosion in a fairly active state requires that the point at which corrosion takes place be exposed to the soil and also that large surfaces of pipe also be exposed. That is a little bit difficult to make clear in a few simple words, but what I am trying to say is this: That in order for the galvanic action to proceed,

meaning by that the setting up of electric currents from one point on the pipe to another point on the pipe and the lifting out of the metal from the pipe at the point where the electric current leaves the pipe, such galvanic action is greatly retarded if only one small spot of the pipe is exposed but the surface of the pipe under the coating adjacent to the spot not being capable of performing its function of receiving the current from the surface represented by the pitted area.

Q. All right, how do you account for the situation you have on Sheet 35 as compared with what you have just stated? There you have a pipe given 98 per cent condition with coating of 30 per cent and this is the way you describe the coating: "Bitumastic, rust stains, rough, heavy soil marks, pulled away in patches, poor condition."

In other words, I gather from this that sections of the coating were actually pulled away, not only at points but in patches, as you say. Still you have a 98 per cent condition there.

A. That is right.

Q. How do you reconcile that with the other?

A. The coating is in poor condition and the resulting corrosion which has taken place due to the absence of the coating, has taken place almost entirely in one of the 12-inch sections which were inspected; namely, Section A. There was no corrosion in Section B, and only one measurable pit, very shallow in depth, being .005 inches deep in Section C. The corrosion which had taken place in Section A was very mild, the pits were very shallow, and the opinion of the inspector was that the pipe was in 98 per cent condition.

Q. And if Mr. Thackrey had come along he would have given it that same per cent condition, in the light of those facts?

A. I believe that Mr. Thackrey would have given it very close to that per cent condition.

Q. Very close to that?

A. Yes, sir.

Q. Now, on Page 39—Sheet 39, you have pipe coating, "40 per cent condition" described: "Bitumastic, thin, slightly plastic, good coverage, heavy soil and rock marks;

rust stains on surface may be due to foreign material in soil; fair condition."

There is no penetration there and you gave that only 40 per cent condition but you have a pipe that you give 96 per cent condition with pitting in every sector, even as large as medium-sized pits in the C sector. How do you account for that pipe condition?

A. I believe you said in your question that there had been no penetrations but there is nothing in the report to indicate that. The report says: "Heavy soil and rock marks," and it further says: "Rust stains on surface may be due to foreign material in soil."

Q. So you yourself were doubtful as to whether there was any penetration there, weren't you, in making that statement?

A. No, I think there had been penetrations.

Q. Why were you doubtful as to what caused the rust stains on the surface?

A. Because in other locations, which I believed might also be applicable to this location, we observed coloring matter in the soil. There may be some iron content in the soil and it was difficult in some cases to differentiate between the color of the soil due to its natural constituents and the color of the soil due to rust which may have come from the pipe.

Q. Now, the pitting of that pipe was much more extensive in general than the *ptting* of the pipe on Sheet 26, isn't that true?

A. The number of pits on M-39 is not only greater but they are more concentrated than is the case on M-27, and that difference in concentration and number accounts for the difference in the rating given to the pipes in the two instances.

Q. But what accounts for the rating that you have given Sheet 39 on your soil condition—your pipe coating per cent as being only 40 per cent when you haven't any definite indication that in your pipe coating statement that there is any penetration of the coating?

A. I believe in the case of M-39 that there were penetrations.

Q. Even though it is not indicated?

A. That is indicated by the heavy soil and rock marks notation.

Q. But you may have those without having any penetration, don't you, in these other sheets? Don't you always indicate where you had—

A. No, sir, not always.

Q. Well, there was either a break, or where it was brittle or penetration, you had none affirmatively indicated on this Sheet 39.

A. Well, the fact that the soil and rock marks were heavy would indicate that it was either penetrated or so nearly penetrated that the results of penetration had been partially obtained.

Q. Well, why were you doubtful about what caused the rust stains?

A. Because we didn't know.

Q. Well, wouldn't you be equally doubtful as to whether there had been penetration, if you didn't know?

A. No.

Q. Not equally doubtful?

A. No.

Q. Why not?

A. Because we can see the extent of the penetrations and it was merely an observation of the physical facts. The presence of the rust stains on the surface as to whether or not that was due to foreign material in the soil or to the rusting of the pipe would have been a conclusion based on an examination of that material, which we did not undertake.

Q. Well, to what extent did you examine that coating to arrive at the per cent condition you gave it?

A. We examined it as to how thick it was, whether or not it was plastic or brittle; whether or not it covered all parts of the pipe, and whether or not it had been marked by soil or rocks.

Q. Oh, yes, right there I want to ask you: You had to approach the matter of arriving at the per cent condition of the coating in a different fashion mechanically than you did the pipe, didn't you?

A. That is right.

Q. You had a straight section of pipe unconnected—strike out "unconnected"—a straight section of pipe that

had not been disturbed. The pipe itself had not been disturbed; the surface had only been cleaned, isn't that true?

A. That is right.

Q. You didn't have that situation with reference to your coating. You actually had only a very short strip of that, one part of which had been very violently disturbed and broken off, in order to make way for your pipe inspection.

A. Well, we had undisturbed coating to look at.

Q. You mean back from that break?

A. It was planned to handle it in that way so we would have undisturbed coating.

Q. How much of it?

A. To look at. Well, there was not less than one foot on each end of the 3-foot section in the middle, and in many cases there was two feet, and in many cases in order to obtain a better inspection of the evidences of rust in the soil we dug back into the backfill and thereby inspected an even longer section of undisturbed coating.

Q. Well, then, if there had been any actual rock penetrations or soil penetrations in this section of pipe at Sheet 39 you would have had a pretty good opportunity to know it for certain, wouldn't you?

A. No, because we didn't see the protective coating which corresponds to the location of the pits. We saw the coating on the undisturbed section of pipe and we there noted heavy soil and rock marks. If there had been actual penetrations on the sections A, B and C, there would have been no way for us to have discovered that.

Q. All right, on Sheet 56, you there give that coating a 40 per cent condition described: "Biturine, B-i-t-u-r-i-n-e, plastic, good covering and bond, coating thin in spots. Rust stains in small spots outside coating especially in third quadrant on C end. Fair condition."

Why a 40 per cent condition on that coating?

A. The 40 per cent is my judgment as to the condition of the coating as I observed it and is the same as the condition on the previously referred to inspection M-39 where I believe the conditions are very generally comparable.

Q. No, you haven't any heavy soil and rock marks here at all.

A. There might have been.

Q. Didn't you attempt in setting forth your statement

under each of these items on each sheet to follow any rule of uniformity?

A. Yes, we followed the rule of noting the outstanding characteristics of the pipe and coating under inspection. Now, in this case there might have been soil and rock stress marks, or the coating might have been unusually smooth at that point. I am unable to state from the particular language used here.

Q. But that is the inspection that happened to be made by you yourself?

A. That is right. The fact that the coating was thin in spots might be due to the pressure on the top of the pipe, which has a tendency to cause the coating to move down or flow around the sides of the pipe, which I would classify as a result of soil stress conditions.

Q. Yes, but your shallow pits are on the bottom of the pipe, aren't they?

A. In Section A, but not in the other sections.

Q. Not in the other sections?

A. No, sir.

Q. And you have a 98 per cent condition of that pipe in spite of the fact that some of the pittings were large and the others were medium in Section C, weren't they?

A. That is right, but the pits are very scattered and were not in spots as indicated on M-39.

Q. Now, turning to Sheet 69, there is a section of pipe that is in 100 per cent condition.

A. That is right.

Q. That is in a section that has poor drainage, isn't that correct?

A. That is right.

Q. And there you have "Pipe coating—bitumastic—no rust stains—very few lines—no soil stress marks—good covering—good bond. Excellent condition."

From looking at your pipe you found that was in 100 per cent condition but from looking at the pipe coating that could not possibly be in 100 per cent condition, could it?

A. No, it had a few lines on it.

Q. What kind of lines?

A. They might have been root lines or vegetation lines. They usually are.

Q. You didn't make that inspection?
A. No, sir.
Q. You don't know what character those lines were?
A. No, but that is the usual character of lines.
Q. Then on Sheet 80 where you made the inspection and the report shows: "Pipe coating—Barrett hot enamel, plastic—complete coverage—good adherence—no rust stains. Excellent condition," that couldn't possibly be rated 100 per cent?
A. I don't believe it could.
Q. It could not?
A. No, sir.
Q. In your opinion you couldn't ever rate pipe coating 100 per cent?
A. I never have.
Q. But you have rated the per cent condition of the pipe 100 per cent?
A. That is right.
Q. That is possible an the other is impossible?
A. I wouldn't say it impossible.
Q. But you have never done it?
A. I never have done it.
Q. Now, this—strike out "this"—Sheet 7—
A. Pardon me?
Q. On Sheet 71 it couldn't be possible that the per cent condition of 71 per cent there had any relation to the number of this sheet, could it? You didn't make that estimate?
A. No, sir.
Q. That has a pipe condition of 71 per cent?
A. Yes, sir.
Q. There are not very many pittings there, are there?
A. There are, but they are quite deep.
Q. But quite deep?
A. Yes, sir.
Q. All right.
A. And they are overlapping.
Q. What about Sheet 72? You have some there that are quite deep, too, haven't you? There are a great many more there than you have on Sheet No. 72? Why is that 79 per cent?
A. They are not as deep.
Q. Oh, they are not as deep?

A. Yes, sir.

Q. What about the others? Let's take them on Sheet 72. Your first one there is .062. Isn't that deeper than every other one except .080 on Sheet 71?

A. That is correct.

Q. What about the next one, .051? Isn't that deeper than all except the first one on Sheet 71?

A. That is right.

Q. .040 is just a little bit under that .043 on Sheet 71?

A. That is right.

Q. But .051 and .061, and then in the second section, all of those are deeper; the third section, all of those are deeper; still you give that 79 per cent and the other 71 per cent?

A. Partly on account of the pits not being as deep.

Q. You have just turned it around. The pits on Sheet 71 are not as deep as those on Sheet 72 except that one appearing at the top of Sheet 72.

A. The per cent condition on B-31—strike that.

The per cent condition on B-17, Sheet 72, of 79 per cent, is higher than on B-16, Sheet 71, because the pits on the former are not as deep as the pits on the latter.

Q. The pits on Sheet 72 are not as deep as those on Sheet 71?

A. They are not the deepest pits, no, sir.

Q. You mean there is only—strike that.

There is only one pit on Sheet No. 71 that is deeper than those on Sheet 72, isn't that a fact?

A. Yes, but it was overlapping with the adjacent pits and that caused a weakening of the pipe.

Q. That caused a weakening of the pipe?

A. That caused a weakening of the pipe not only due to the fact that it was deeper but also due to the fact it was overlapping.

Q. All right, explain that.

A. If the pits are isolated and not overlapping they do not have as much effect on the strength of the pipe as if they are overlapping.

Q. All right, but look at the number of pits that you have on Sheet 72 and the extreme depth of those in com-

parison to all of your other pits on Sheet 71. What about that with reference to the condition of the pipe?

A. The number of pits would not contribute directly to the rating of the pipe; for example, in—

Q. Taking not just the number but the depth also.

A. That is what we did, which I have already explained.

Q. And as many pits as you have here, not just the number but just the depth of them, in comparison with Sheet 72, would still prompt a giving of 72 a 78 per cent condition as compared with 71 giving a 71 per cent condition?

A. Absolutely.

Q. The sheet before that, Sheet 70, in there I see you have given that a 78 per cent condition.

A. That is right.

Q. How did you arrive at that?

A. There were only two pits. One of them is extremely deep.

Q. All right.

A. The loss of strength was judged on the basis indicated by this report. The pits indicated on this section have since been restored by spot welding as indicated by the report—as indicated by the report as being possible. I have hydraulically tested pipe which is almost identical with this particular inspection and found that the loss of strength of the pipe wall due to a pit of that character is not serious. I think in this case I have understated the per cent condition.

Q. Of the pipe?

A. Of the pipe on B-15, Sheet 70.

The Trial Examiner: We will stand in recess until 2:00 o'clock this afternoon.

(Whereupon, at 12:30 o'clock, p. m., a recess was taken until 2:00 o'clock p. m., of the same day.)

Afternoon Session, 2:00 P. M.

The Trial Examiner: The hearing will be in order.

Whereupon, HARRY D. HANCOCK, the witness on the stand at the time of recess, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination (Continued)

By Mr. Lange:

Q. Mr. Hancock, referring to Sheets 77 to 83, mentioned this morning with reference to covering sections that included secondhand pipe—

A. That is right.

Q. You say that was indicated to you because there was paint in the bottom of the pits?

A. On portions of the line; on other portions of the line it was apparent that the pipe was new.

Q. What do you mean by new? It had just been installed before, hadn't it?

A. Not necessarily, no.

Q. What do you classify as secondhand pipe?

A. Pipe which has been used in one location and is later used at another location.

Q. I see.

A. On this particular line it was composed of both new and secondhand pipe.

Q. Both new and secondhand pipe?

A. Yes, sir.

Q. Well, now, this Sheet 81, did any of those paint marks appear to indicate it had been used before, that particular section of pipe?

A. Of course, I can't state an affirmative answer that it was not used before, but I would judge it had not been used before. I have regard to the pipe reported on B-26, Sheet 81.

Q. What about Sheet 80 under "Corrosion"? You have stated here: "Pipe covered with tool marks which looks like cleaning machine marks evidently made before painting."

A. I would judge that in that instance the pipe had been used before; otherwise, the cleaning machine marks would not have been there.

Q. You gave that a 97 per cent condition?

A. Yes, sir.

Q. And on Sheet 81 you gave it 100 per cent condition?

A. Right.

Q. If the pipe covered by inspection Sheet 81 were a secondhand pipe—you gave it 100 per cent condition?

A. Yes, sir.

Q. Would you classify that as having the same value as new pipe in 100 per cent condition?

A. Yes, sir.

Q. You would?

A. Yes, sir, it was as good as new.

Q. Although it might have been reconditioned and you don't know how long it had been in the ground before?

A. No, I couldn't say affirmatively how long it had been in the ground, but what I say was that it was identical with new pipe. It had the roll marks on it and with the exception of the pick marks near one end of the pipe, made while digging an inspection hole, the pipe was perfect.

Q. You have the working papers there on the compressor stations, Mr. Hancock?

A. Yes, sir.

The Trial Examiner: Mr. Hancock, you made some mention of a pick hole in the pipe as the result of digging a pit for inspection, didn't you?

The Witness: Yes, sir.

The Trial Examiner: I am not an engineer and this, perhaps, is rather an academic question, but would you briefly advise me as to the manner in which these pit holes are dug? What precautions are taken not to disturb the pipe as you dig down into the pit?

The Witness: The inspection holes were dug by a contractor, as Mr. Davis testified to last Friday. The contractor and workmen were warned to exercise all possible care in excavating not to strike the pipe, but we saw that in a few cases inadvertently a tool did strike the pipe and it is very apparent when there is a fresh tool mark that it is a fresh tool mark, so they are easily identified as distinct from corrosion.

The Trial Examiner: Do these workmen remove all of the dirt from around the pipe or do you do that when you make the inspection?

The Witness: They remove all of the dirt from around

the pipe and underneath the pipe so the inspector can get underneath to look at it.

The Trial Examiner: Can they do that without disturbing this enamel coating on the pipe?

The Witness: No, the instructions were to remove the enamel coating from the 3-foot section in the center of the inspection hole, but not to disturb the enamel coating in the balance of the hole.

The Trial Examiner: I see. That is, where you made your inspection as to the condition of the coating?

The Witness: Yes, sir. The removal of the enamel is a very hard job. It takes quite a lot of time to get it off. It is hard and has to be chipped off and it takes a couple of workmen an hour or two to get it off, even in the 3-foot section. The final operation is with paint remover to remove the last of it, the primer coat which is underneath the enamel.

The Trial Examiner: I see.

By Mr. Lange:

Q. Referring to Sheets 80 and 81, do you know what the company paid for the pipe that was installed in those sections?

A. No, sir.

Q. Can you ascertain that information for us?

Mr. McCreery: What is it that you want?

Mr. Lange: The pipe that these two sheets 80 and 81 cover.

Mr. McCreery: The particular joint or section?

Mr. Lange: Those two sheets, 80 and 81.

Mr. McCreery: That is the information desired.

Mr. Lange: That is right.

Mr. McCreery: If it is available we will get it; if not, we won't. However, we will be glad to give it to you if we have it.

Mr. Lange: All right.

Q. Mr. Hancock, referring to your working papers on the Wellington compressor station, now, please? In your Exhibit No. 107 you have Buildings and Foundations, 90 per cent condition?

A. Yes, sir.

Q. Buildings and Foundations, how did you arrive—strike that.

Exactly how did you go about determining that per cent condition?

A. By a general inspection of such parts of the foundations as were exposed—we did not excavate around the foundations—and the determination of any cracks or checks in the concrete, and an examination of the steel work in the frame of the building and the steel sheets which covered the building, and an examination of the paint, and an approximation of the extent of depreciation overall in that entire account.

Q. Well, those buildings and foundations, and so forth that you have, consist of different classes of property, don't they?

A. That is right.

Q. In other words, the building parts consist of what kind of material that enters into its construction?

A. The main buildings consist of steel framework, Truscon type of construction which is covered on the outside by steel plates painted with aluminum paint.

Q. And that structure is built on a concrete foundation?

A. That is right.

Q. And how did you go about determining the per cent of condition of that concrete foundation?

A. By an inspection of that portion which we could see. As I previously stated, we did not excavate to determine if there was any deterioration of the foundation under the surface of the ground.

Q. How much of it was exposed, of the concrete foundation?

A. I expect about two feet above the ground.

Q. And that was what percentage of the total, approximately?

A. I couldn't say.

Q. You don't know how much of it there is under ground?

A. No.

Q. Did you give the whole building a per cent condition without attempting to determine the per cent condition of the metal part before you determined the condition of the concrete?

A. I treated the account as a whole.

Q. And by just observing the condition of the building and of the foundation, you gave the entire structure a one—rather, a single per cent condition?

A. As a whole, yes, sir.

Q. As a whole?

A. Yes, sir.

Q. Well, would that metal and other material that goes into the structure above the concrete depreciate as rapidly or as slowly as the concrete itself?

A. Probably more rapidly.

Q. Probably more rapidly?

A. Yes, sir. However, the aluminum paint coating was in good condition. It might require some touching up in spots and have slight rust stains, but no pitting or corrosion on the metal sheets.

Q. And you just arrived at an overall per cent, just considering the concrete and structure built on it as one unit?

A. That is right.

In that particular case there was some question in my mind as to what portion of certain defects in the concrete foundations were due to deterioration and what proportion was due to construction conditions; for example, on the southeast corner of the main building, if I have my directions straight, there is a patch of roughness on the concrete foundation which indicates to me that it might have happened due to freezing during construction. In other words, about half an inch of concrete was spalled, which would have happened had the concrete had a slight touch of frost during construction. I don't believe it could have happened after the concrete cured.

Q. What time of the year was that concrete cured?

A. I don't know that it was or that it was a freezing condition. I state that it indicates the type of defect that

might have resulted from freezing. It might have been some other reason—

Q. I see.

A. I don't wish to be understood as saying it did freeze or that it was built during freezing weather.

Q. What further investigation did you make with reference to ascertaining any further facts on that point?

A. I didn't make any investigation on that point?

Q. Before I overlook it, I will ask you this: Going back to Exhibit No. 108, if these lines, main and lateral, as set forth in these sheets, were adequately maintained, how long would those lines continue to function for the transportation of natural gas?

A. Subject to adequate maintenance and necessary replacement, they would continue indefinitely.

Q. Now, going back to this Wellington station again, you have "Company Cottage—weather board—asbestos—shingle—concrete foundation—well painted—condition good, with an 85 per cent condition." How do you arrive at that?

A. By an inspection of the cottage, observing the foundation and the siding and the shingles and porches and general construction of the cottage and its general condition.

Q. How long has that cottage been there?

A. As far as I know, it was built when the station was built.

Q. That was what year?

A. I think it is on the work sheet that you have there.

Q. On this work sheet?

A. Yes. It was first operated in 1926.

Q. Now, this steel building that you first gave the description of and per cent of condition, was that built at the same time?

A. Yes, sir.

Q. And it is your opinion that this wooden—strike "wooden"—that this company cottage of wood construction as detailed in your work sheets has a present condition of 85 per cent, and the other building of 90 per cent, the steel building?

A. No, sir.

Q. What is the correct fact?

A. The buildings as a whole have 90 per cent.

Q. The buildings as a whole?

A. Yes, sir. The cottage to which I refer is a very small percentage of the building investment.

Q. Do you mean the cottage is a small unit of the items that go into Wellington compressor station?

A. It is a small percentage of the items that go into buildings and foundations at Wellington station, and it is still a smaller per cent of the items that go into the Wellington station as a whole.

Q. Oh, yes, you have "Oil Tanks—slight corrosion—fair 95 per cent condition"?

A. Yes, sir.

Q. Do you know how long they have been in service?

A. No, but I think they were installed when the station was built.

Q. When the station was built?

A. Yes, sir.

Q. Now, as I understand it, these inspections at the Wellington and Arvada stations were made by you personally?

A. That is right.

Q. Or did you have someone else do it like you did with the pipe line inspection?

A. I made the inspection personally.

Q. And you determined the per cent condition yourself?

A. Yes, sir.

Q. And from your testimony this morning, those inspections of the two stations were made on the one day, November 19, 1940?

A. That is right.

Q. How far are those two stations apart in distance, approximately?

A. I wouldn't care to approximate it, but I will measure it if you want me to.

Q. Yes, please do.

A. It will take about five minutes.

Q. You can make a note of that and in the meantime we will go into something else.

On page 8 of your Exhibit No. 107 you state: "The arithmetical average per cent condition of the pipe and coatings at the 83 places of inspection were 93.43 per cent

and 61.08 per cent, respectively." That is 93.43 per cent? Is that the—

Mr. McCreery: You intended to refer the witness to Page 9 instead of Page 8, Mr. Lange.

Mr. Lange: I beg your pardon?

Mr. McCreery: You said Page 8. You meant Page 9.

Mr. Lange: I beg your pardon. I have reference to Page 9.

Q. Does 93.43 per cent represent the average per cent condition of the pipe?

A. It does.

Q. And 61.08 per cent represents the average per cent condition of the coating?

A. It does.

Q. Now, then, you state: "The observed weighted per cent condition of the pipe lines, including pipe and coatings, based on investment data furnished to me, was 92.46 per cent."

What investment do you have reference to?

A. The plant and the investment data corresponding to each pipe line.

Q. You mean the items that are reflected on the company's books and records as to cost?

A. Yes, sir.

Q. As to the original cost of these properties?

A. I couldn't say whether it is original cost or not.

Q. And what particular information in connection with that was furnished to you that you used to base your proceeding under this section—

A. All of the investment data that was so furnished.

Q. Now, then, was that taken by you from the company's books and records or was it in a compiled form, or in what form did you get access to it?

A. It was in compiled form and furnished to me, and I did not take it from the books and records.

Q. Who furnished it to you?

A. Mr. Willard.

Q. Mr. Willard?

A. Yes.

Q. What is his position?

A. He is engaged in work of that character having to do with the investment data pertaining to this case.

Q. To this rate proceeding?

A. Yes, sir.

Q. With what organization is he connected?

A. I understand he is employed by Electric Advisers, Inc.

Q. Well, you would know, wouldn't you, Mr. Hancock, what connection he has with them or if he is actually in fact employed by them?

A. Yes, that is my understanding.

Q. And he supplied you with that information?

A. Yes, sir.

Q. In connection with the inspection you made of all of these items of property, did you make any determination at that time or take into consideration the fact whether any portion of it or any item of it was in use or not in use?

A. No, sir.

Mr. McCreery: Are you referring to the lines? To what do you refer?

Mr. Lange: I will limit it to the compressor station, compressor station equipment, and other property connected with the compressor station.

The Witness: No, sir, I did not. I mean by that that element did not enter into my conclusions.

By Mr. Lange:

Q. Well, was it known to you or not?

A. Yes, sir.

Q. Which items, if any, in the items of equipment at either one of the stations were not in use?

Mr. McCreery: Just a moment. Do you mean on that day or currently in use?

Mr. Lange: Currently.

The Witness: It was my finding that all of the equipment in those two compressor stations which I inspected was in use currently with the possible exception of a spare

unit which is used and held in reserve for emergencies or in case an accident might occur on peak days. I classify such an emergency unit as being used and useful.

By Mr. Lange:

Q. And which station was that?

A. Both.

Q. Both?

A. Both Arvada and Wellington.

Q. You are pretty well informed as to the record of operation of those two stations, aren't you?

A. Yes, sir.

Q. How frequently have either or both of those units been operating during the past twelve months?

A. I am speaking from memory now and I may not be exactly right. At the Wellington station the per cent of operation during the past twelve months is something like 17 per cent—that may be just the order of the percentage—and at the Arvada station, somewhere in the range of 23 or 25 per cent.

The Trial Examiner: That is of this unit, Mr. Hancock, you describe as having in reserve?

The Witness: No, sir. I am speaking there of the percentage by the actual compressor hours operated of all of the units to the total potential compressor hours they could operate if all were operated all of the time. That includes the emergency unit, because the emergency unit is not held aside as a unit because they are all operated at one time or another, but not necessarily all of them at any one time.

By Mr. Lange:

Q. I don't believe I asked you Friday, when you gave your qualifications and experience, as to the cases in which you have testified. If you don't know them offhand, can you make a list of those proceedings?

A. I think I can answer that and you can see if the answer is satisfactory and complete enough.

Q. All right.

A. Beginning in 1920, I appeared in numerous proceedings before the Court of Industrial Relations of the

State of Kansas, later the Public Utilities Commission, in regard to rate matters affecting the Kansas Natural Gas Company and also in connection with the same proceedings before the Federal Court, Judge Booth presiding, at Minneapolis.

During the following few years I also appeared before the Public Utilities Commission of Kansas in various rate cases involving the pipe lines and distributing companies in that state.

Q. That is, the State of Kansas?

A. Yes, sir.

Q. Are those the Cities Service cases that they had in Kansas?

A. That is right, but to go back a little bit on my next to the last previous statement, I wish to state this: In the appearance before Judge Booth I was the Commission's witness.

Q. What was the subject matter of the testimony?

A. It related to leakage and loss and unaccounted for gas.

In the following few years I appeared in various rate case proceedings before the Corporation Commission of Oklahoma, and on one occasion I was employed by the Corporation Commission to make an investigation and testify before the Commission as to the results found.

The Trial Examiner: Do you recall the name of that case, Mr. Hancock?

The Witness: I can't give you the exact name, but it involved the Oklahoma Natural Gas Company and the particular subject of the investigation was the town border measurement problems and leakage problems at Muskogee and Wagoner, Oklahoma.

The Trial Examiner: It wasn't a rate case?

The Witness: It was a branch of a rate case but not the rate case proper. It was one phase of a rate case.

The Trial Examiner: I see.

The Witness: In 1931 I appeared before the Public Utilities Commission of Kansas in the Cities—strike the

last—before the Public Utilities Commission of Kansas in the general rate case involving the city gas rate in Kansas, and again—not in the same proceedings—in a similar proceeding which was held in 1934.

By Mr. Lange:

Q. Did you testify in the Wichita case?

A. I don't know whether I could identify it as the Wichita case.

Q. The one that subsequently went to the Supreme Court of the United States?

A. I think I testified in all those cases, but whether it is the one you have in mind or not, I am not able to say.

A few years later I testified before the Interstate Commerce Commission in the Empire Pipeline Company case which was a valuation case.

Q. Were those all of the cases that you can recall?

A. They are all I can recall at the present time.

Q. Which of these named proceedings did you give testimony similar to the character that you have given in this proceeding, or have prepared exhibits comparable to these?

A. The two particular proceedings which come to my mind are the 1931 and 1934 cases involving the gas rates in Kansas before the Public Utilities Commission and the proceeding before the Interstate Commerce Commission in the Empire Pipeline Company case.

I might add that I have prepared certain information, but have not yet testified to it, in cases involving the Kansas City Gas Company before the Public Utilities Commission of Missouri and the Arkansas-Louisiana Gas Company before the Public Utilities Commission of Arkansas.

Q. In these proceedings where you prepared testimony or gave testimony on behalf of the regulatory bodies, did that include testimony of a nature as you have given here today in this proceeding?

A. No, sir, it did not.

When I refer to the leakage testimony made on behalf of the Kansas Commission, I mean testimony regarding

the economic study of leakage reduction distinct from any attempt to put per cent conditions on property.

Q. Now, in connection with your data that you had for the preparation of these two exhibits and the testimony that you gave, what information did you have available as to the reserves of gas that are in turn available to the company from whom Colorado-Wyoming Gas Company purchases its gas?

A. None.

Q. None?

A. None.

Q. You had no such information available?

A. No, sir.

Q. You gave it no consideration?

A. No, sir.

(Vol. 25, pp. 3454-3510.)

J. L. WILLARD, a witness for Colorado-Wyoming Company, testified as to present per cent condition of certain classes of property of the Company (Ex. 111, Statement 2; Vol. 26, pp. 3567-3586.)

The witness resides in New York, is associated with F. C. Hamilton (a witness on Going Concern Value in this case), who is Consulting Engineer for Electric Advisers, Inc. Witness graduated in civil engineering at the University of Colorado in 1922. His association with the natural gas production, transmission and distribution companies of the Cities Service group began in that year and has continued to the present time. From 1925 until 1935 he was an engineer in the Rate and Valuation Department of Henry L. Doherty & Co.; from 1935 to 1937 he was an employee of Cities Service Company in the same capacity; and since January 1, 1938, has been employed in the same capacity by Electric Advisers, Inc.

Since 1925 he had full or joint supervision over valuation work in many states on behalf of numerous companies in the Cities Service group. Such work related both to electric companies and to other companies engaged in the joint distribution of gas and electricity. More recently he had

charge of two complete valuations of the Natural Gas Pipeline Company of America, together with its associate, Texoma Natural Gas Company, the result of which work was presented before the Federal Power Commission in August, 1939. The total value of the properties with respect to which the witness has made valuations is approximately 800 million dollars.

Has had general supervision over valuations being compiled in various parts of the country, and in addition has been and is engaged directly and in a supervisory capacity on Original Cost studies, in compliance with 2 D of the Uniform System of Accounts prescribed by the Federal Power Commission.

The witness testified that:

> "This work requires complete analysis of all construction job costs and allocation of all such costs to particular units or items installed. It also involves the investigation of maintenance work with the view of determining whether or not some of the charges were properly capitalizable."

Witness testified before the Federal Power Commission Examiner in the Natural Gas Pipeline Company case in 1939; in the Federal District Court in Colorado in connection with the condemnation of electric property in the City of Fort Collins in 1934; and has actively participated, without testifying, in several rate cases before the Kansas, Missouri, Ohio and Michigan Public Service Commissions and the Interstate Commerce Commission.

(Vol. 25, pp. 3527-3532.)

His study and determination of present per cent condition included the following classes of property:

The newly constructed compressor building and warehouse at Arapahoe Station, which at the time of testimony by the witness was being completed and prepared for service. (Account 1004) (Cost $1,332.62), 100 per cent condition (Vol. 26, p. 3567).

All the office equipment, including furniture, calculating machines and typewriters (Account 1008) (Cost $3,415.25) to which he gave an 85 per cent condition (Vol. 26, pp. 3568-3569).

Automobiles and trucks. (Account 1009) (Cost $5,053.34), to which he gave an over-all 58 per cent condition (Vol. 26, pp. 3575-3576).

Miscellaneous tools (Account 1011) (Cost $1,295.55), to which he gave a 50 per cent condition (Vol. 26, p. 3579).

Telephone lines (Account 1018) (Cost $498.74), to which he gave a 95 per cent condition (Vol. 26, pp. 3583-3584).

Organization expense (Account 1019) (Cost $3,472.28) was not depreciated (Vol. 26, p. 3586).

The witness arrived at the stated per cent condition of the foregoing classes of personal property in the following manner:

He made careful personal observation and examination of the various items in each of the several classes of property inspected and reported on by him, as to per cent condition or depreciation thereof. Has had considerable experience over a period of years in the determination of present utility value of such property in his work as a valuation engineer.

To Office Furniture, desks, tables, chairs, and steel cabinets and shelving, based on usage and experience, he applied a factor of 92 per cent condition; to calculating machines and typewriters based on the same factors plus the maintenance cost of restoring moving parts as they deteriorate, he found them to be in 70 per cent—the over-all per cent conditions being 84.97, and so 85 was adopted. He did not consider the age of any item as a factor in his determinations, as age is not the measure of the extent or character of use to which it has been subjected, which did have a bearing in his study and determination. With respect to the calculating machines and typewriters he sought and obtained information as to the character and extent of use that had been made of them.

Automobiles and trucks were given a present per cent condition, based on the following factors: actual annual depreciation, original cost, salvage or turn-in value, years in service and usage.

Tools consist mainly of small portable tools, welding, and pipe threading equipment, etc. In many of the items de-

terioration in the main is for parts which are replaceable at a small cost. Most tools were pretty well used.

The Telephone Line, from Wellington Compressor Station to the Town of Wellington consists in the main of No. 12 wire, glass insulators, receiving sets and incidental items. The poles upon which the line is strung do not belong to the company. The wire and insulators deteriorate very little. He made careful observation, in the light of his many years of experience in the valuation of electric power lines and equipment. The line is in good condition. Date of installation was not a factor in his determination of per cent condition.

The per cent condition of all other items and classes of depreciable property of the Company was determined by Mr. Hancock.

(Vol. 26, pp. 3567-3586.)

On cross-examination, with respect to Exhibit 111, he testified that he did not take into consideration anything at all that the Company had set up on its books for depreciation. His study embodied in Exhibit 111 is based strictly on Observed Depreciation.

"Q. What character of depreciation has been set up by the company on its books?

"A. I think I heard Mr. Davis say that was just an arbitrary allocation set up on the books of the company.

"Q. You heard Mr. Davis' testimony with reference to the fact that the figures were submitted to him by the New York office?

"A. Yes, I heard him say that.

"Q. Well, as a man treating accounting matters in the preparation of this kind of an exhibit, what attention did you give to those figures that appeared on the company's books?

"A. None at all.

"Q. None at all?

"A. No.

"Q. You made no investigation as to whether they were excessive or not?

"A. I wouldn't even know how to go about measuring whether they are excessive or not.

* * * * *

"*The Witness:* • • • this exhibit was built up on the basis of recorded book costs of the property less observed depreciation, and no reference was made in any way to any amount set up on the books of the company as an arbitrary allocation to a reserve accrual."

(Vol. 26, pp. 3621-3624, 3626.)

• • • • •

Q. Now, in connection with the preparation of that Statement No. 1, you applied, as you stated, the per cent condition figures as computed by Mr. Hancock in his Exhibit No. 108?

A. That is correct.

Q. And you presented the dollar figures in accordance with those percentages?

A. That is correct.

Q. Rather, those percentages were computed in September 1939 and you are applying them as to September 30, 1940. What are you doing about that one year in between?

A. I think ordinary maintenance and repair of the line during that period would probably keep them in the same condition.

Q. Oh. Then there is no depreciation that you take care of at all for that year?

A. I applied the factors that Mr. Hancock gave me as to the value of September 30, 1940.

Q. Yes, but these computations and percentages were arrived at by him, according to this exhibit, and according to his testimony, as of September 30, 1939, and reflect conditions as of that time?

A. Yes, sir.

Q. Well, you make no provision for any depreciation for the ensuing period of one year?

A. I had nothing to do with the depreciation of those accounts handled by Mr. Hancock.

Q. Yes, but you set up your statement as of September 30, 1940, giving what you determined the depreciated properties and plant and investment less depreciation, didn't you?

A. That is correct.

Q. And there is one year in between there that you haven't taken account of, isn't there?

A. Yes, sir.

Q. And how do you justify that?

A. I don't want to speak for Mr. Hancock, but I believe his testimony said that depreciation wasn't a matter of time or years; that he indicated that pitted condition on the pipe was decelerating; that in my opinion the maintenance and care given the lines in the interval during the time that he made the study and the date of these figures would indicate that there is no change in those conditions.

Q. You stated that during that year you assumed that there was proper maintenance kept up on these properties?

A. There is proper maintenance kept up all the time.

Q. You would be just capitalizing that; you wouldn't need any other depreciation?

A. I don't understand your question.

Q. You didn't give any account to any depreciation accruing during that year, but you said you assumed that proper maintenance would be kept up?

A. Correct.

Q. You would just be capitalizing that maintenance; you wouldn't acquire any additional depreciation?

A. I don't think that maintenance is capitalized.

Q. If you would proceed in that fashion you wouldn't capitalize maintenance?

A. No, it is a maintenance charge.

Q. It is a maintenance charge?

A. Yes. Spot welding and—

Q. During that period, as you stated, there was no depreciation that you took into account or that existed during the twelve months period?

A. I used Mr. Hancock's figures.

Mr. McCreery: I don't believe this witness conceded there wasn't any. He said he didn't make any alteration of the figures.

Mr. Lange: I think the record shows what the witness said.

Mr. McCreery: That is what I say.

The Trial Examiner: The fact is, Mr. Willard, your computation dated September 30, 1940, nevertheless, is based on depreciation observed in September of 1939, isn't that correct?

The Witness: Correct.

Mr. McCreery: That is, with respect to the items covered by Mr. Hancock?

The Witness: On pipe lines only.

Mr. McCreery: Mr. Hancock's compressor station examinations were made in 1940; his 1939 study included only the main line.

The Trial Examiner: That is what I recall, the main and the laterals.

Mr. Lange: The main line and all laterals set forth on Exhibit No. 108.

Mr. McCreery: That is right.

By Mr. Lange:

Q. Referring back again to Statement 1, Exhibit 111, did you take into consideration anything at all that the company had set up on its books for depreciation?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Or what the company had currently set up on its books for depreciation?

A. No, sir. This was based strictly upon observed depreciation.

Q. And the company's records on that didn't serve as a guide at all?

A. No, sir.

Q. Why didn't you give it any consideration at all?

A. Because the entire depreciation in this exhibit is based on observed depreciation.

Q. What character of depreciation has been set up by the company on its books?

A. I think I heard Mr. Davis say that was just an arbitrary allocation set up on the books of the company.

Q. You heard Mr. Davis' testimony with reference to the fact that the figures were submitted to him by the New York office?

A. Yes, I heard him say that.

Q. Well, as a man treating accounting matters in the preparation of this kind of an exhibit, what attention did

you give to those figures that appeared on the company's books?

A. None at all.

Q. None at all?

A. No.

Q. You made no investigation as to whether they were excessive or not?

A. I wouldn't even know how to go about measuring whether they are excessive or not.

Q. Why do you suppose the company set them up on its books?

Mr. McCreery: I object to that as wholly immaterial and irrelevant and that it is not proper cross examination.

Mr. Lange: Mr. Examiner, he has testified with reference to the construction of this exhibit from the company's books and records; he states he is thoroughly familiar with accounting problems with the history of this company and—

The Trial Examiner: I know, Mr. Lange, but he has not considered depreciation set up on the books of the company.

Mr. Lange: He said he did not give it consideration in the preparation of this exhibit, but I want to know what consideration he gave it from the fact that it did appear on the company's books—

The Trial Examiner: I understood he gave it no consideration.

Mr. Lange: —in the preparation of this exhibit.

Mr. McCreery: He said that he gave no consideration whatsoever to it.

Mr. Lange: I will ask him as an accountant what his opinion was with reference to that item that he found on the company's books when he prepared this exhibit.

Mr. McCreery: I object to that as not proper cross examination and it bears no relation to any issues herein involved.

Mr. Lange: This witness went to the company's books and determined the character of the exhibit he was going to prepare. In taking those figures he had to determine what he was going to consider and what he wasn't going

to consider. He is constructing an exhibit comprised of engineering and accounting matters and I want to know as an accountant what his opinion was with reference to the treatment of them.

The Trial Examiner: Mr. Lange, the witness says he gave them no consideration. He stated that he knew they were on the books of the company but gave them no consideration whatsoever.

Mr. Lange: I want to know why he didn't as an accountant in an accounting manner.

The Trial Examiner: All right.

The Witness: As you previously stated, this exhibit was built up on the basis of recorded book costs of the property less observed depreciation, and no reference was made in any way to any amount set up on the books of the company as an arbitrary allocation to a reserve accrual.

By Mr. Lange:

Q. In connection with your engagement on this work, were there any particular limitations within which you had to work?

A. I was requested to make this exhibit.

Q. You were requested to make it in what fashion?

A. In the fashion that it is made.

Q. And you were instructed to make it in that fashion?

A. I would say I was under instructions to make it in that fashion.

Q. Under what character of instructions?

A. There were no instructions at all in the manner that I was to make it except that it was to reflect observed depreciation.

Q. And what else was to be reflected from those instructions that you got?

A. I received no instructions. I made it up with my own accord—other than to reflect observed depreciation as compiled by Mr. Hancock and also compiled by myself.

Q. In connection with this engagement, who gave you your instructions with reference to the matters that you were to prepare for presentation in this record?

A. I was advised by Mr. Hamilton to come out here and prepare the necessary data for this hearing.

Q. To prepare the necessary data for this hearing?

A. Yes.

Q. Who was to determine what would be the necessary data?

A. I guess in this instance I was the one that determined it.

Q. You were the one that determined it?

A. Yes.

Q. And you determined the manner in setting up the items on this Statement 1?

A. Oh, yes.

Q. And you determined the manner in which the property was to be depreciated?

A. I determined the manner in which the amount of depreciation would be reflected on these sheets. I didn't determine the manner in which the pipe lines and compressor stations would be depreciated, no, sir.

Q. You mean that you took the figures from those as prepared by Mr. Hancock and related those percentages to dollars?

A. That is correct.

Q. But what were your instructions with reference to those items with which the figures of Mr. Hancock did not apply?

A. The entire exhibit was based and depreciated on the basis of an *observe* depreciation, and since Mr. Hancock did not compute the existing observed depreciation on certain accounts, I calculated that myself.

Q. Then your instructions were to *used* observed depreciation in the preparation of the exhibit?

A. Yes, sir.

Q. From whom did you get those instructions?

A. Mr. Hamilton.

Q. Mr. Hamilton?

A. Yes.

Q. What are his initials?

A. F. C. Hamilton.

Q. F. C. Hamilton?

A. Yes.

(Vol. 26, pp. 3617-3626.)

H. P. Davis, Secretary of the Company from its organization to date, testified with respect to the balance sheet item of September 30, 1940, entitled "Reserve for Depreciation of Gas Plant" $504,482.22 as follows:

The amount stated is the remainder in that account at that date after certain charges and credits from time to time. The Company never set up any specific rate of annual depreciation charges in that account. The amounts set up "are more or less arbitrary amounts set up from year to year based upon what we felt was needed at that time." He continued "at various times they used different approaches and different percentages. At one I believe we used four per cent straight line depreciation" (Vol. 24, pp. 3308-3309). Apparently in the early years the Company attempted to accrue an amount equivalent to what the Federal Income Tax Bureau would permit as a deduction (Vol. 24, p. 3310). The determination was made in New York; the witness did not participate therein; the amounts so determined were entered on the books of the Company as furnished from year to year by the New York office accounting department; and witness made no investigation or independent computation of his own as to the basis used or whether it reflected the proper annual depreciation rate and amount (Vol. 24, pp. 3311-3315, 3318). "The whole purpose of the account was to endeavor to set up sufficient money to provide for replacements, extraordinary items as they might come up" (Vol. 24, p. 3316). "Our experience has shown us that by then (1937) our replacements had not materialized as rapidly as we thought perhaps they would" (Vol. 24, p. 3320). The annual accrual was reduced in that year (Vol. 24, p. 3321). There has been no determination recently of accrual (Vol. 24, pp. 3322-3325).

Composite Service Lives (Commission Ex. 200).

Fulton W. Copp, a witness on behalf of the Commission, testified: He is an engineer by profession, employed in that capacity by the Division of Gas Engineering of the Federal Power Commission at the Regional office of the Commission in Denver, and has been so employed since April 17, 1939.

. . . . . .

A. "In June 1925 I was graduated from the University of Illinois with the degree of Bachelor of Science in railway electrical engineering after having spent an additional year at the University taking courses in economics and finance.

"From 1925 to 1928 I was employed as assistant to the Plant Superintendent of a subsidiary of the Borden Company in Detroit, Michigan. My work with this company included the operation, testing and maintenance of electrical equipment, Diesel and steam engines, boilers and other equipment used in the fluid milk industry; analyses of operating costs and property inventories. Prior to my permanent employment with this company, I had worked several summers in their accounting division.

"In 1928 I was employed by the Ohio-Kentucky Gas Company, which at that time was engaged in the production of natural gas, principally in eastern Kentucky. My work with this company included leasing of gas lands, purchasing of rights of way. Subsequently, I was made assistant to the Chief Engineer and later had charge of all of the company's activities in eastern Kentucky, which included drilling, the construction of gathering systems, building of measuring stations, and the construction of a field booster station.

"In 1929 I was transferred to Texas, where I had charge of all of the activities of the Texas Fuel Gas Company which was engaged in the production, transmission and distribution of natural gas for domestic and commercial purposes. Subsequently, this company became the Texas Gas Utilities Company and its activities were expanded considerably. I made the initial surveys and assisted in the design of the company's new transmission lines and distributing systems in southwest Texas. I also made market survey for both domestic and industrial gas in areas not served by the company.

"Late in 1930 I was transferred to New York where I made engineering studies and compiled data in connection with the financing of natural gas companies. During this period, I made inspections of properties and studied the operations of natural gas companies in West Virginia, Ohio, Tennessee, Louisiana and Oklahoma and visited many of their principal industrial consumers. Later I made an ex-

tensive market survey for industrial gas in northern Ohio. I also spent considerable time in Minneapolis assisting in preliminary engineering work on a proposed gas pipe line to serve that city. Late in 1931 I made a market survey for industrial gas in central New York state.

"From 1932 to 1937 I was in charge of operations of a drift placer mine in California as well as being an officer of the company operating the mine.

"In 1937 I was employed as operating manager of the East Penn Gas Company at Lancaster, Pennsylvania. In addition to having charge of the operations, I did considerable work in the development of distribution of liquefied petroleum gas to large consumers.

"In 1938 I was employed as engineer by the Memphis Natural Gas Company where I did special work in connection with cathodic protection of pipe lines of the company. I also had charge of the preparation of a detailed physical inventory and an original costs analysis of all of their properties.

"Since April 1939 I have been employed by the Division of Gas Engineering of the Federal Power Commission as an Associate Engineer. My entire time with the Commission has been devoted to the present investigation of Canadian River Gas Company, Colorado Interstate Gas Company, and Colorado-Wyoming Gas Company."

Q. Mr. Copp, in connection with your assignment of work having to do with Colorado-Wyoming Gas Company, what portion of your time did you devote to that after being employed by the Commission?

A. Commencing on September 18, 1939 I devoted practically all of my time until May 1940 and perhaps a month in the latter part of 1940.

Q. Now, then, during that period of time, did you have occasion to actually make—strike that—to actually see and go over the plant and properties of the company?

A. Yes, sir, I have been over them several times.

Q. You informed yourself primarily of all of those factors prior to the time that you got the basic data for the determination of composite service lives of Colorado-Wyoming Gas Company properties?

A. That is correct.

Q. You proceeded then with the matters essential for the determination of such composite service lives, did you not?

A. Yes, sir.

Q. Did you in connection with that particular work prepare an exhibit preceded by a written statement which then sets forth in detail the composite service lives determined for property of Colorado-Wyoming Gas Company by you?

A. I did.

Q. Is this the written statement which sets forth the composite service lives at the end of it?

A. It is.

Mr. Lange: Let us have it marked for identification.

The Trial Examiner: It will be marked for identification as Exhibit No. 200.

(Vol. 66, pp. 9608-9611.)

* * * * * *

A. "Colorado-Wyoming Gas Company Determination of Composite Service Lives.

"This exhibit was prepared by me and under my direct supervision, and shows composite service lives, by accounts or property groups, applicable to the gas plant of Colorado-Wyoming Gas Company as of December 31, 1939. The annual straight-line depreciation rates shown in this exhibit have been determined from the composite service lives shown therein.

"In September, October, November, and December 1939, inspections of the physical plant of the company were made by Federal Power Commission engineers. Transmission, compressing, measuring, and general property were inspected. The location, type of construction, operating conditions, degree of maintenance, exposure to weather and other factors causing deterioration, and the extent of accrued physical depreciation and of accrued absolescence were noted for all property inspected. The age of most of the units of property was determined from dates of installation as shown on the records of the company. Op-

erating and maintenance methods were observed, and operating experience was discussed with company officials.

"Service lives and composite service lives have been based primarily on the physical lives of the various units of property; however, consideration was given to other causes of property retirement whenever such factors were determinative. Company records, from the inception of operation, were analyzed to determine the causes of all major property retirements. These included physical deterioration, caused by wear, tear, rust, and the action of the elements; inadequacy; obsolescence; requirements of public authorities; and other causes. Probable future conditions of operation compared with past service conditions were considered. The probable life of the natural gas supply and other factors which have a bearing on the probable service life of the property in each account were taken into consideration. The system was considered a continuing enterprise which will operate so long as a supply of natural gas is available. The net salvage value of the physical plant of the company at retirement is considered negligible, and no salvage value has been assigned.

"In this exhibit 'adjusted book cost' represents the original cost of gas plant as shown in reports presented in this proceeding by accounting examiners of the Federal Power Commission. 'Service life,' as used in connection with this exhibit, means the period during which a particular unit of property is used or performs a useful function in the rendering of service. 'Composite service life,' means the weighted average service life of all units of property within a primary account classification or property group, determined by dividing the total capital in each primary account or property group by the sum of the annuities applicable to the individual units.

"In the following paragraphs, there is given a brief summary of the elements considered in arriving at the composite service lives determined for each account or property group:

"Organization Expense: The articles of incorporation provide for perpetual existence of the company, and grant the company authority to engage in many activities

throughout the world, in addition to its present principal function. Due to these facts, the amounts in this account are not considered to be subject to depreciation or amortization.

"Transmission Lines (Main Lines and Laterals): A total of 55 pipe inspections was made on the main 10-inch, 8-inch, and 6-inch transmission line running from Arapahoe Measuring Station to Cheyenne, Wyoming, and 28 pipe inspections were made on the branch lines, or on the average, one inspection for approximately each $17,000 of investment.

"These inspection locations were selected by the company with the exception of a few additional locations which were requested by engineers for the Commission. Inspections were made in September 1939.

"At each location selected for inspection, a section of pipe approximately 40 inches long was cleaned. The procedure followed by the Commission's engineers at each inspection was to divide a 36-inch section of clean pipe into three 12-inch sections and take 10 or more pit measurements on each section. These pit depths and the general condition of the pipe were recorded.

"In addition, if the pipe was coated, the kind and condition of coating in the adjacent uncleaned sections of pipe were recorded; notes were also made regarding type of soil, soil hydration, drainage, and description of adjacent property. The pipe inspection data, together with calculations relating to them, an analysis of the major retirements as shown on the company's records, consideration of the natural gas supply, and other pertinent information were used as guides in arriving at service lives for the main line and lateral lines. It was concluded that 50 years is a reasonable composite service life for the main transmission line, and, that 40 years is a reasonable composite service life for the lateral lines as a group.

"Transmission System Measuring Stations: Two measuring stations are included under transmission plant: Berthoud field station, west of Berthoud, Colorado, which measures gas purchased in the Berthoud field; and Fort Collins division meter station, which measures gas trans-

mitted to Fort Collins and points north thereof. The property carried under this heading consists of measuring station equipment. This equipment was inspected in the field. The type of construction, condition of the property, and the degree of care used in maintaining it were observed. A composite service life of 27 years has been determined for Transmission System Measuring Stations.

"Compressing Stations: This property group consists of compressing station structures and equipment. Two compressing stations were owned and operated by the company as of December 31, 1939; The Arvada Station, near Denver and the Wellington station, approximately 13 miles north of Fort Collins, Colorado.

"Main engines, compressors and much of the equipment of Arvada station were originally installed at Wellington station. A detailed inspection of both stations was made in the latter part of 1939. Type of construction, condition of the property, and degree of care used in maintaining it were observed.

"An analysis was made of engine-hours operated since installation. All of the above facts relating to past operation and present condition, as well as probable future operations, the probability of retirement due to obsolescence and to depletion of gas supply, were taken into consideration in establishing service lives for this property. A composite service life of 37 years has been determined for compressing stations.

"Distribution Plant: The property carried under this heading consists of land owned in fee, which is non-depreciable, and measuring station structures and equipment. The company owns 37 measuring stations, some equipped with orifice meters, some with positive displacement meters, and some with both types of metering equipment. Measuring station structures are generally owned by the company, but in a few instances are owned by the customer served. Observed condition, past changes made by the company, and service lives determined by others for similar property have been considered in arriving at a composite service life of 30 years for measuring station structures and equipment.

"Transportation Equipment: This account consists of automobiles and trucks. From an analysis of the experience of the company, a composite service life of five years was determined as reasonable for this account.

"Office Furniture and Equipment: This account consists of office furniture, office machines, and similar property. After giving consideration to the kind of property, its use, and to the company's past experience, 15 years was determined as a reasonable composite service life for equipment in this account.

"Miscellaneous Tools: This account consists of miscellaneous tools and maintenance equipment. The physical life of much of this equipment is affected by deterioration with time as well as with use. A composite service life of 15 years is considered reasonable for this account.

"Communication Equipment: This account consists of an iron-wire telephone line from the Wellington compressing station to the main circuits of Mountain States Telephone and Telegraph Company at Wellington, Colorado, strung on the poles of the telephone company. A composite service life of 30 years was adopted for this account."

Q. Mr. Copp, proceeding then in the manner as given in your written statement, you determined composite service lives in the Colorado-Wyoming Gas Company as reflected in the next succeeding page?

A. That is correct.

Q. I will ask you whether the items under the account named and adjusted book cost as of December 31, 1939 in each of those columns was taken from the schedule 1 appearing at page 37, Exhibit 199?

A. Yes, that is correct. It came from Schedule 1, Exhibit 199.

Q. Page 37?

A. Page 37.

Q. And the service lives appearing on this page were computed by you?

A. That is correct.

Q. And those service lives after having been computed by you were then given to the Commission's ac-

countants for their use in connection with the depreciation exhibit?

A. That is correct.

Q. Of course, you had nothing to do with the application of the service life figures in so far as any accounting matters were concerned?

A. No, I merely supplied the service lives themselves to the accountants.

Vol. 66, pp. 9612-9619.)

* * * * *

Commission Exhibit 200 (Appendix this Record).

Cross Examination.

By Mr. McCreery:

Q. Mr. Copp, have you made other detailed depreciation studies of gas properties?

A. Yes, sir, I worked on a similar study of the East Penn Gas Company.

Q. Were you in charge, or were you under someone's direction?

A. I was more or less second in command. The man I worked for spent only part-time on the property.

Q. What was the character of your study there?

A. We were determining service lives for depreciation rates.

Q. For annual depreciation rates?

A. That is correct.

Q. You were not checking the present condition of property?

A. No, sir, I was a permanent employe of the company.

Q. What has that to do with it?

A. I mean I wasn't there just temporarily on that job.

Q. What I meant to say was, you were not at that time making a study of the then condition of the property but were determining service lives?

A. That is correct.

Q. For the purpose of annual depreciation charges?

A. Yes, sir.

Q. In the usual manner?

A. Yes.

Q. Such a study isn't directed to a determination of the condition of the life of a property at any given time, is it?

A. No, you can do this at any period.

Q. You don't in that manner arrive at what happens to be the present condition of property by taking a service life and cutting it in proportionate shares for the years?

A. No, sir.

Q. So this evidence is not offered for that purpose, I take it.

A. That is right.

Q. You have working papers, I take it?

A. Yes, sir.

Mr. McCreery: So if desirable, we can have access to them, Mr. Lange?

Mr. Lange: Yes, the working papers of Mr. Copp will be made available to you.

By Mr. McCreery:

Q. You might just give us an idea of how you arrived at these results. You have taken into account, according to your statement, a great many different factors. Have you applied those factors in some kind of a formula?

A. Not necessarily. They all serve as guides.

Q. What was the determination of how one factor would guide and how another factor would guide? To what extent? How did you weight these guides, Mr. Copp?

A. Well, according to their importance they were all given due consideration. The ones that were considered more important were given more weight.

Q. Suppose we do this: Let's start in at the top and go down the line on the various factors as you gave them importance in their own study. What was the first most important factor in your study?

A. These service lives are based primarily on the physical life and the physical life was given one of the greatest weights.

Q. Naturally: that was the total physical life as you computed it, it was really the starting point?

A. That is correct.

Q. In other words, you started with a 50-year service life and then sort of fitted everything into that?

A. Not everything. Some items we knew wouldn't last fifty years, so we didn't consider fifty years on those at all.

Q. Tell me how you arrived at fifty years on the transmission line?

A. All right.

Q. Let me withdraw that question and I will ask you another one or two preliminary questions.

What consideration did you give to the life of the natural gas supply which serves this company?

A. We gave that consideration.

Q. What consideration?

A. From our calculations concerning transmission lines—

Q. That is right.

A. —the physical life was in excess of fifty years.

Q. Of the transmission line?

A. That is correct.

Q. All right.

A. So we determined, or arrived at what we thought would be the life of the natural gas supply.

Q. And you determined what with respect to that?

A. We determined what we considered would be the life of the supply available to this company.

Q. And had you arrived at a figure of fifty years?

A. We put a figure of fifty years on the transmission lines. The life of gas supply we arrived at was in excess of that.

Q. It was in excess to that?

A. Yes, that is correct.

Q. Accordingly, having arrived at the conclusion that the gas supply would last a greater period than fifty years from the date of acquisition of these properties, it was therefore discarded in your future calculations because your longest service life is fifty years?

A. That is partially true. We didn't want to put a service life on anything when there wouldn't be any gas there.

Q. But you just said you found a longer life of the gas supply than fifty years.

A. Yes. I would like to explain that a little further.

Q. All right.

A. These service lives are average service lives and for particular units of property—some of the units of property that may last in excess of fifty years.

Q. To leave that out you have given a maximum of fifty years as your composite and I assume that is because some of the property would last less than fifty years and some of it would last more than fifty years in your computation, so you concluded fifty years represented the average?

A. Yes, that is, referring to the main transmission line.

Q. That is all I am referring to now. I am taking the longest service life given. You did conclude that the gas supply would last longer than fifty years?

A. That is right.

Q. Whatever effect that had was negligible on further computations?

A. Yes. At that point we adopted fifty years and we forgot the gas supply. We assumed that there would be gas at that time.

Q. So that has no practical bearing on the approach to this problem that you have made?

A. Well, I think it has had a bearing on it because it is one of the rather important factors.

Q. Is it important if it is going to outlive the property?

A. Well, we have considered this property as a continuing enterprise that will operate so long as the gas supply is available.

Q. But we are not considering the enterprise; we are considering the property to which you have given a composite life of fifty years. All of the other property is of a lesser service life. Having found the gas supply is in excess of fifty years, isn't it true that you gave no practical consideration thereafter in this study to the gas supply?

A. Well, since we knew the gas supply would last as long as our longest unit of property, that was the answer there.

Q. That's right.

A. That was the answer there.

Q. And by the way, what number of years' life did you give to gas supply?

A. Well, it depends entirely on the basis that you work it out on.

Q. It apparently does.

A. Well, there are other factors other than the reserve of the field.

Q. Well, in passing I wanted to know what figure you used was all, without going into the geology of it all. I am not trying to go into that.

A. Well, I am not a geologist, to begin with—

Q. I know, but what number of years in your own mind did you arrive at in connection with this study?

A. I have several figures in mind.

Q. All right, I would be interested to hear them.

A. Well, as I said before, the number of years in which I have calculated the gas supply to last depends on several other factors than the reserve of the field.

Mr. Lange: You mean the reserve of the Canadian River Gas Company?

The Witness: I am considering only one reserve, but other factors concerning withdrawal.

By Mr. McCreery:

Q. But your are speaking now of the Amarillo field?

A. That is correct.

Q. But this company, of course, has no gas supply of its own?

A. That is correct.

Q. Go ahead.

A. Well, considering the withdrawals as furnished in Exhibit 80 in this hearing by Mr. Hendee on the Colorado Interstate Gas Company, I have calculated the length of time of 67 years from 1928; that is, basing the withdrawals on Mr. Hendee's rate in Exhibit 80.

Q. Now, what other figures did you arrive at?

A. Well, using the estimated requirements as set forth by Hill of the Federal Power Commission.

Mr. Lange: Mr. Lee Hill?

The Witness: That is correct. I have a total life of 62 years from 1928.

By Mr. McCreery:

Q. Have you another figure?

A. That is all, using the present facilities for—that is, using the present Colorado Interstate line and the present lines and facilities of Texoma Natural Gas Company and Natural Gas Pipeline Company of America. That latter figure that I gave you of 62 years takes into account the possibility of a second line being built to Chicago.

Q. So with those figures in mind you naturally concluded that you didn't need to worry yourself about the gas supply in connection with this study in Exhibit 200?

A. That is right.

Mr. Lange: Well, I think the witness stated that after he had satisfied himself that there was an adequate supply that thereafter, then you proceed with the consideration of other necessary factors?

The Witness: That is right.

Mr. McCreery: That is, dealing with one at a time. I didn't try to distort anything he said.

Mr. Lange: No, I just wanted to make certain that he did not discard the idea of the matter of the reserves when he proceeded to the others.

Mr. McCreery: I think he put them out of mind in this study.

Mr. Lange: No, he said he considered it first and then proceeded to the other.

Mr. McCreery: The last question I asked him was, having arrived at these figures he naturally discarded any further consideration of the gas supply in his study under Exhibit 200 to which he replied, "yes."

Mr. Lange: That is what I wanted to make certain, what he meant there, whether having reached that point he proceeded to the other points of consideration. I think that is the way I gathered from what his testimony meant.

Mr. McCreery: I am getting that one disposed of. I want to weigh each one. Now, this one, as I understand, is not going to enter into our weighting. That is what I was trying

to arrive at. I want to weight these various considerations that moved him to arrive at certain results.

Q. Now, having disposed of that, Mr. Copp, what was the most—what was the next important item that you considered in this study?

A. Well, I don't know which one would be the next important.

Q. Well, let's go to No. 2, then.

A. Is that a question you asked me?

Q. Yes, I meant it as such, yes. This is the background of your study now. The next item of importance, if not the most important, one of the important items. We'll take it that way.

A. Well, we inspected the pipe as to its—

Q. Inspection of plant?

A. That is correct.

Q. Now, what was that inspection of plant to determine?

A. That was made to determine the accrued depreciation or the amount of deterioration which has taken place.

Q. Did that have a relation, then, to your service life of fifty years?

A. Yes, we took that into consideration.

Q. Well, it had a relation?

A. That is correct.

Q. In other words, this plant inspection had a relation to your determination of a fifty-year service life of the—well, we will deal right now with the transmission line for simplicity.

A. We used the results of that determination as a guide in arriving at our fifty years.

Q. All right, now, how much of a guide?

A. It was considered in conjunction with these other things. I wouldn't say. It carried some weight. Exactly how much, I don't know, because in my opinion it is difficult to relate these things mathematically and come out with an answer.

Q. I am having difficulty myself, Mr. Copp, but I wanted to get what your operations had been in this respect.

A. It was used merely as a guide.

Q. As a matter of fact, you would have arrived at a 50-year life with the elimination of any one of the various elements that you did consider, would you not?

A. No, I don't think so. We gave them all due consideration, and I wouldn't like to have dropped out—

Q. Any of them?

A. That's right, any of them.

Q. All right, now, let's take the next one that you gave consideration to.

A. We gave consideration to maintenance.

Q. Maintenance?

A. And to retirements.

Q. Wait a minute. Just a minute. Now, maintenance of the existing plant?

A. That is true.

Q. Then you have retirements of units that had been retired?

A. That is right.

Q. Just one moment on that. Did you know the condition of those units when they were retired? You have no way of knowing that, did you?

A. No, we didn't see all of them.

Q. Did you see any of them?

A. Yes, sir.

Q. And what was the occasion for retiring, various causes?

A. Now, we are speaking only of the transmission line?

Q. Yes, only for the purposes of our present discussion, that's right.

Mr. Lange: Yes.

The Witness: Well, one particular instance, and one of the very few retirements that the company has had to date, was because the pipe had deteriorated.

By Mr. McCreery:

Q. Yes, that's right, and now how many instances of retirement do you know of?

Q. One instance that I remember specifically.

Q. You remember one instance?

A. That is right.

Q. You don't recall of any others?

A. Not offhand. This is still considering only transmission lines.

Q. That's right, and when I leave that I will make it clear. I am not trying to get you confused in the different elements.

A. That's right. I just wanted to get that clear.

Q. You have one instance of that. Did you know where that pipe section—how many sections of pipe in that one instance?

A. I don't recall specifically the number of feet.

Q. Do you recall where it was?

A. Yes, sir.

Q. And the character of the soil conditions?

A. I know some of the conditions surrounding it.

Q. Do you know where it was taken out?

A. That is right.

Q. Did you go and visit that spot?

A. Yes, sir.

Q. What did you find there?

A. I found new pipe had been put in its place.

Q. True enough. I am talking about the surrounding conditions.

A. I don't know whether they have materially changed since that pipe was taken out or not.

Q. You don't know about that?

A. No.

The Trial Examiner: You mean the condition of the soil, Mr. McCreery?

Mr. McCreery: That is what I am geting at—soil conditions, water conditions.

Q. You don't know what the conditions were at the time of removal?

A. Only what I have been told by persons connected with the company.

Q. Do you know what the condition was of soil and water prior to removal?

A. No, I don't.

Q. Now, what is the next element?

A. We took into consideration inadequacy.

Q. Inadequacy. Now, how did you use that?

A. That was considered but not given much weight because it has not to date been an important factor, but it may be in the future.

Q. Just how do you use that term in your study?

A. Well, to cite an example of something that might be inadequate, is the line that supplies Fort Lupton and Brighton, the branch that runs over there. In the future it may not be of sufficient size to take care of the requirements. If the Kuner-Empson Company should enlarge their facilities or require more gas over there, it may not be of sufficient size to take care of their requirements.

Q. Well, now, did you make any factual investigation on the question of inadequacy, possible inadequacy or probable inadequacy in the future as to any part of this system?

A. I talked to the plant superintendent of the Kuner-Empson Company and it was his opinion that they may possibly need more gas over there.

Q. Possibly?

A. That is correct.

Q. And is that the extent of your factual investigation on the question of inadequacy?

A. There are, of course—there is the possibility, of course, and I haven't checked into that thoroughly—

Q. Before you answer it that way, just answer my question first and then you may give your explanation.

A. I made no definite checks as to inadequacy.

Q. Now, go ahead and say what you had to say.

A. If the new Remington Arms plant being built in the vicinity of the Colorado-Wyoming line should want gas, there is a possibilty that there might be inadequate facilities. That is very new and has not been given any consideration.

Q. So of course you are now testifying in 1941 with respect to a determination in 1939 in light of 1941 conditions?

A. Bringing them up to date, more or less.

Q. That's right. You have to do it. You have to live in the present.

A. That's right.

Q. But you made no factual inquiry except some conversation with the plant superintendent of Kuner-Empson Company on the question of inadequacy?

A. I talked to him regarding his requirements and that is as far as it went?

Q. His present or what?

A. His present and future requirements.

Q. As far as he knew?

A. That is right.

Q. Now, what is your next element?

A. The next element is obsolescence. Concerning the main transmission line, that is practically negligible.

Q. So that that element was practically nil?

A. That is right.

Q. And inadequacy was almost nil, wasn't it?

A. It wasn't given much weight.

Q. Slight weight. All right. Now, what is the next?

A. Requirements of public authorities.

Q. Now, what do you mean by that?

A. Well, there are several requirements of public authorities. I think an example of one is where the pipe crosses public roads and where it is now cased.

Q. Pipe—and not cased?

A. That is right.

Q. Now, tell me about that.

A. Well, if some public authority should decide to widen the road or make some changes and they would insist that that line be cased, there is a possibility of a retirement there due to the fact that you might have to take the old pipe out and put in some new.

Q. Instead of casing the line that you have?

A. That is right.

Q. And then, of course, there is the situation where you just simply case the pipe?

A. Yes, you might just case it.

Q. Much would depend upon the condition of the soil and the water levels and so forth adjacent to that particular stretch of pipe, wouldn't it?

A. Well it depends a little on what they tell you to do, I think.

Q. So they might insist on new pipe?

A. That is right.

Q. Even though the existing pipe was all right?

A. That is true.

Q. Do you know of any cases of that kind?

A. Yes.

Q. Not in Colorado?

A. Not on Colorado-Wyoming Gas Company.

Q. That's good. I'm relieved. Now, what other requirements?

A. Another example of public authorities widening the road and where your pipe is so far underground that it wouldn't be worth while removing. It might be better just to retire it and put in some new pipe.

Q. The deeper it is the less likely it would be that the road would disturb it, isn't that true?

A. That is right, but they might ask you to move it out due to the effect of various factors, such as vibration from trucks. This is where they widen the road where the pipe is under the road.

Q. Parallel with the highway or under it?

A. Right under it, not on the side.

Q. All right, now, what is the next one?

A. Well, then, there were other causes.

Q. And no more requirements of public authorities in your mind?

A. Well, not now.

Q. Well, how much weight did this requirement of public authorities have?

A. It was one of the factors that was considered. We didn't give it much weight.

Q. Very slight?

A. That's right.

Q. Now, what is your next? other causes?

A. Yes, there are other causes that should be considered.

Q. Now, what are those other causes?

A. Well, in this particular case the depletion of the Wellington gas field is another cause.

Q. Depletion of the Wellington gas field. Now, just how much weight did you give that?

A. Well, as the system is now constituted, it didn't receive a great deal of weight, although it was given a lot of consideration.

Q. Would you say slight weight to that?

A. Well, I don't like to relate these mathematically because they weren't used that way.

Q. I haven't asked for a percentage, and I have refrained from doing that because it seemed to me that these being in your mind sort of intangible elements, it was proper not to ask that, but certainly I have the desire to know what your mental processes were.

A. Well, as the system is now constituted, that was not given a great deal of weight.

Q. That would be what? Would you say small or slight or what?

A. Well, slight is all right.

Q. All right, now, what else?

A. The possibility of other fuels being substituted.

Q. Other fuels?

A. Yes.

Q. Well, did you give any study to that?

A. Yes, sir.

Q. What bearing did that have?

A. We gave that consideration on one industrial customer, the Colorado Portland Cement Company at *Laport*.

Q. How much weight did you give that?

A. Oh, that was given rather a small amount.

Q. Do you happen to know that at the present time that that contract is probably out entirely?

A. No, I don't know that.

Q. Well, is that slight weight, too, or more than slight weight?

A. I would give it a little more than slight.

Q. More than slight?

A. Yes.

Q. Did you talk to them?

A. Yes, sir.

Q. When?

A. About two weeks ago.

Q. What did they say?

A. They said they had renewed the contract for 1941.

Q. I think you are mistaken there because it has not been renewed, as a matter of fact.

A. Then the man was misinformed that told me that.

Q. Who told you that?

A. Mr. Ballantyne.

Q. Who is he?

A. Auditor.

Q. Now, suppose that you had been told that the contract had not been renewed because they were going to put in coal. Would you have given substantially greater weight to this, then?

A. I might have.

Q. Well, I mean, would you?

A. Yes, I think I would have, but I also know that the same thing came up last year and the contract was renewed—it wasn't renewed until just before they started taking gas.

Q. That is always possible. I understand that. Now, what other elements?

A. I think that's about all.

Q. Now, how much weight did you give to your retirements, based on the one instance that you had in mind?

A. They weren't given very much weight because the retirements of this company concerning pipe are rather small.

Q. What about maintenance?

A. That was given more weight.

Q. And maintenance has been very excellent, has it not?

A. The quality of the work has been very good.

Q. Yes. Has the maintenance been good as a whole in your judgment as an engineer?

A. Yes, I would say that it has.

Q. So you gave considerably more weight to that?

A. No, not necessarily.

Q. No?

A. I gave consideration to the amount of maintenance that has been done in the past and what probably has to be done in the future.

Q. That's right, but did you give slight or some or considerable weight to that?

A. Well, of course, slight and some and considerable are all kind of relative.

Q. You use a word, then.

A. Well, those words are as good as I could use.

Q. Well, you select one of them.

A. It has been given a small amount.

Mr. Lange: We are still talking about the main transmission line?

Mr. McCreery: That is what I told him. I told him when we would depart from that, and I will so indicate it.

Mr. Lange: Yes.

By Mr. McCreery:

Q. Now, I think in your statement you referred to other things, other things with respect to some of the items of property. I don't know whether you gave any weight to the experience of others in this part of your study or not.

A. I wouldn't say we had.

Q. None whatever—experience of other pipe line companies?

A. Yes, I would like to correct myself there. It has been given a slight amount.

Q. That is, the service life of pipe in other gas lines?

A. Not so much concerning the service life as the maintenance, I think, was given a little more consideration, of other companies.

Q. In what way?

A. Well, I know of lines that are in similar territories and what their maintenance has been in the past, and naturally that was in my mind when we thought about Colorado-Wyoming.

Q. So you considered other companies, then, on maintenance?

A. To the degree of maintenance that they performed.

Q. In considering the service life, you say you did not consider other companies at all, other pipe lines?

A. To a very minor extent.

Q. All right. Now, are there any other elements that entered into your consideration?

A. I don't think so.

Q. Did you consider such things as perhaps floods or storms or anything of that kind that might be visited upon the pipe lines?

A. Oh, yes, that comes under other causes. That is kind of a catchall. We can put it that way in there.

Q. That is very slight weight?

A. It is concerning Colorado-Wyoming, because I know of only one instance where they have had trouble from that cause.

Q. I am not trying to impose it upon you as a ground. I am just trying to find out what grounds you did use.

Now, you also examined the books of the company to see

the date that the elements of this line were put down, did you not?

A. That is right.

Q. So the date of installation was entered into your calculation?

A. Yes, that is true.

Q. And what weight did you give to that?

A. Well, that was given some weight, more than small, I would say.

Q. Substantial weight?

A. Well, not too substantial, but it was given some.

Q. Weight, but not too much?

A. That's right.

Mr. McCreery: All right.

The Trial Examiner: The hearing will stand in recess for five minutes.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

The Trial Examiner: The hearing will be in order.

By Mr. McCreery:

Q. Now, Mr. Copp, what do you mean by composite life?

A. Well, I think that in the written statement on Page 2 it sets that out: "Composite Service Life means the weighted average service life of all units of property within a primary account classification or property group."

Now, that was determined by dividing the total capital in each primary account or property group by the sum of annuities applicable to the individual units.

Q. Well, now, for instance, let's take up the transmission lines. Now, you have 10- 8- and 6-inch lines. How many groups did you divide those into?

A. They were considered as one group.

Q. So that your figure there was not a composite, it was just a single figure?

A. It was a composite in so far as it related not only to pipe but to the fittings attached to it.

Q. I am dealing now with the pipe. That was one figure on the pipe?

A. That is correct.

Q. So you didn't have from the point of view of the pipe itself, that being the principal part of the transmission lines, any composite. It was all the same from Littleton to Cheyenne, was one unit in your study?

A. In the final analysis it was, but in determining—or considering the physical life as a guide, it was not. It was taken in groups according to sizes and wall thickness.

Q. Well, now, let's see. Have you got your working papers on that?

A. Yes, sir.

Q. To show all these groups?

A. That is right.

Q. So we can observe those?

A. That's right.

Mr. Lange: You have those with you, have you, Mr. Copp?

The Witness: Yes, sir.

Mr. McCreery: We can't do it during the course of the hearing very well.

Mr. Lange: I just wanted to be sure that he had them here so we could make them available after the hearing.

By Mr. McCreery:

Q. Just in general, how did you do that with respect to the pipe?

A. Well, we have given the physical life of the pipe considerable weight in determining the service life.

Q. Now, the physical life and the service life, what's the difference?

A. Well, the service life means the period in which this pipe is used and performs a useful function. The physical life is how long it can actually be in service.

Q. And which is the longer?

A. The physical life is slightly longer than the service life we have given it.

Q. Now, then, go forward from there.

A. Well, we made a lot of calculations as guides that were used in determining the service lives and these calculations were—

Q. What were those calculations?

A. Well, they were made from data obtained duing our pipe line inspection.

Q. In determining the service life of the pipe which you finally concluded for the overall was fifty years?

A. That is correct.

Q. What is the principal factor which you have, as an engineer, in determining the service life of a piece of pipe?

A. The deterioration was considered as the principal factor.

Q. The deterioration as of when?

A. As of the time of the inspection was made.

Q. Then you set a certain percentage, we will say, and you apply that on a straight line basis on the theory that your deterioration is the same from year to year, is that true?

A. We use the straight line basis.

Q. Well, I asked it a little differently, if you will respond to the question.

The Trial Examiner: Read the question, Mr. Reporter.

(The question referred to was read by the reporter, as set forth above.)

The Witness: We didn't exactly determine the percentage.

By Mr. McCreery:

Q. You didn't at any time determine the percentage?

A. That's right.

Q. You are getting into the realm of sort of non-mathematical judgment, is that it?

A. In the final analysis, that is right.

Q. You never did get to a percentage?

A. We determined a physical life for each of the different sizes of pipe in the line and then we arrived at a composite for all of them.

Q. You mean total physical life?

A. That is correct.

Q. And you looked on that in 1939—you looked back at 1928 and looked forward to '88, something like that—

A. That is right.

Q. Standing in the middle you say "There it is, and here it is, and this is the total"?

A. That is right.

Q. Now, that assumes what—a perfectly uniform set of conditions during the whole period, does it?

A. That is right.

Q. And what you were trying primarily to find and what you did find and what this exhibit shows is the service life?

A. That is right.

Q. And that is all you are trying to show by this exhibit?

A. That is all.

Q. Now, I want before going further to refer to the top of Page 3 on "Organization Expenses." I note that in view of the fact that this company happens to have a perpetual corporate existence, you accept that as the basis for determining that therefore there is no depreciation, although the service life of—the longest service life you attribute to any of its property is fifty years, yet you give no depreciation whatever to the organization expense merely because it is incorporated in that manner?

A. That's right. The charter is perpetual.

Q. Of course, you know very clearly that any corporation can renew its charter indefinitely, don't you?

A. That's right.

Q. So that your picture would have to be the same whether the corporation was incorporated for twenty years or perpetually, wouldn't it?

A. Well, this charter says it is perpetual, so it wouldn't—

Mr. McCreery: Read the question, please.

(The question referred to was read by the reporter as set forth above.)

Mr. McCreery: Being aware of the fact that under the law you can extend your corporate life as often as you want to.

Mr. Lange: Right at that point, I think we are getting into the realm of law.

Mr. McCreery: The witness has already stated, Mr. Lange, that it can.

Mr. Lange: I don't believe he knows whether a corpora-

tion can renew its charter. He says that it is for an indefinite period.

Mr. McCreery: I will ask it in a hypothetical manner, then.

Q. Mr. Copp, supposing the corporation can renew its articles of incorporation as many times as it wants to under the existing law. Would you find, then, that such a corporation would be in the same position as a corporation which happened to have what you call a perpetual charter?

A. I would say yes, assuming that is possible.

Q. Yes, assuming that is possible legally, and assuming that a corporation can continue its corporate existence, then, indefinitely by renewals, you would say, then, that organization expense in no case should be depreciated at all, would you, following the analogy of your conclusion in this case?

A. That is right.

Q. Do you know whether that is done or not?

A. Whether charters are renewed perpetually?

Q. No, whether that theory of yours is followed?

A. I think it is.

Q. You are not sure of that, though? You wouldn't want to say that?

A. That is bordering a little on the legal aspect, I think.

Q. I think so, yes. So that the fact, after all, of a limitation on the life of the plant would be no limitation to your mind—which would entitle a retirement of the organization expenses?

A. Well, I think it would be, if—if it specifically designates any specific line of business, when that company was done, that's all they go into.

Q. But we found that the life of the field is going to be in excess of the life of the property, and with the expiration of the life of the property, what is the corporate organization worth?

A. Perhaps I haven't made myself very clear. The life of the field is in excess of the service lives we have set.

Q. So our service life is fifty years as a maximum for the property of this company.

A. That again it must be considered is an average service life.

Q. All right, let's consider it. Make your figure what-

ever you want. I don't care what your figure is for the purpose of this question, but there is at some point even with the last item of property, a wearing out point, is there not?

A. Yes, there is.

Q. All right, now, we have got a wearing out point, wherever you want to place it. Now, what good is the corporate organization after that?

A. This particular company is not limited to the transportation of natural gas.

Q. But it was organized and functioning. The mere corporate charter is not what we are talking about, it is the organization of this company for this business, isn't it? Of course, you are aware of the fact that to start in a brand new business, in order to get the articles of incorporation, it is incidental as compared with the other preliminaries of organizing and starting in business. You are familiar with that, from your own business experience?

A. All right.

Q. So that after all, if there is an end of the life of this property, isn't that the end of this corporate setup as made to do this business?

A. I am not so sure it is because the company may under this present organization go into some other sort of business.

Q. Let's assume for the purpose of this question that a corporation can engage in one line of business and can amend its articles to engage in any other line of business, and we will assume that that can be done by law; then any company would be in the same position as this company, wouldn't it, with respect to perpetuity of existence and character of its operations, if as I have assumed, that you can take care of either, readily, under the law?

A. Well, if you can do everything that you say you can, then that is true.

Q. Then you would depreciate it under those circumstances?

A. It would be depreciated if it were limited to this one thing, but in the case of the Colorado-Wyoming Gas Company is not limited.

Q. And so that is the basis. Now, when you say "depreciation," what you mean is "retirement," isn't that right? You can't in any strict sense depreciate organization ex-

penses. They are retired. The depreciation is a physical process, isn't it?

A. Generally speaking.

Q. That's what I mean. So that this means a retirement life, doesn't it?

A. Now you are speaking of organization expenses?

Q. Yes.

Mr. Lange: Mr. McCreery, I believe it says in that paragraph, "depreciation or amortization."

The Witness: Yes, I was just going to mention amortization.

Mr. McCreery: I was trying to get it clear in the testimony. I wanted the testimony to be clear on it, is all.

Q. It is simply a retirement, isn't it, if you allow it? Now, you don't allow it here, but now, supposing we had a corporation of the type that you say which has a limited corporate life and is dedicated under its existing articles to one particular line of activity. Under those circumstances would you have allowed the retirement there?

A. It could be amortized.

Q. All right, you would have amortized it, would you, in this exhibit?

A. If it had been limited to a particular field.

Q. A particular field and for a particular time.

A. That is correct.

Q. You would have then amortized it?

A. Yes.

Q. And what would have been your period of amortization—the longest life of any element of property or the shortest life?

A. The longest life.

Q. So even though an other part of your system is only good for forty years, you would still amortize this over the fifty years after you had worn out your distribution system, is that right?

A. Well, the property would still be operating.

Q. Of course, we are just talking about book entries now, aren't we? That's all these amount to really.

A. Well they are used in connection with accounting.

Q. That is what I mean, yes. I want to take the oppor-

tunity to look over your work sheets, so I will go forward from here.

Now, your main line, you have given a service life of fifty years to that.

A. That is correct.

Q. And to the lateral you have given a composite service life of forty years?

A. That is right.

Q. Now, on what basis did you arrive at that distinction?

A. On the lateral lines the physical condition was given considerably more weight.

Q. On the lateral lines, physical condition was given more weight?

A. It was not given more weight than on the transmission lines, but our guide calculations concerning lateral lines showed them to have a shorter physical life than the main lines.

Q. Where are your guide calculations? Have you got those in your working papers?

A. Yes, sir.

Q. You will produce those, will you?

A. Yes.

Q. What do you call them—guide calculations?

A. That's right.

Q. All right, and what was the basis upon which those guide calculations, for instance on the laterals, showed forty years and on the main lines showed fifty years? What was the principal basis for that difference?

A. It was due primarily to the condition in which we found the pipe on the lateral lines.

Q. So that you say you gave more consideration to the condition of the physical conditions on the lateral lines than on the main lines?

A. No, we gave considerable consideration to the physical condition of both lateral and main lines, but the result of our calculations on the lateral lines showed a shorter physical life than for the main line.

Q. You mean a total over all service life?

A. That's right.

Q. Now, have you got a table by which you work out this composite forty-year figure picture?

A. I have working papers showing the guide calculations on it.

Q. I wish you would prepare copies of these calculations so that we may have them.

A. They are rather extensive. They cover this whole book.

Q. It is a whole book of them. I wonder, can we arrange, say, the first thing in the morning to go over those with you before the hearing commences?

A. Any time that is suitable to you.

Mr. Lange: Any time that you suggest, Mr. McCreery.

Mr. McCreery: Could we arrange to go over them with you at 9:00 o'clock in the morning?

The Witness: Yes. This evening will be all right.

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* * * * *

Q. Mr. Copp, in connection with your study embodied in the document marked Exhibit No. 200, you stated yesterday that you had certain guide calculations which were considered by you in connection with this study?

A. That is right.

Q. How many of those guides did you work out?

A. We worked out guide calculations for pipe—

Q. I mean with respect to pipe, limiting it to that.

A. We worked out three sets.

Q. You worked out three sets?

A. Yes.

Q. And your first guide set of calculations as you applied that to this, what service life did you get?

A. By using various factors we got different answers.

Q. I appreciate that you did have what you might call your No. 1 calculation there—

A. That is true.

Q. What service life did you get, applying that in your own way to this situation?

A. That was approximately 137 years on this first method.

Q. 137 years on this first method?

A. That is concerning the main line only.

Q. I mean, we are confining our testimony to that until I change, so that will be understood with you.

A. All right.

Q. Now, with respect to the second method which has other factors or modified factors, as you applied that calculation to the service life here involved, what service life did you get?

A. That was slightly in excess of one hundred years.

Q. Slightly in excess of one hundred years?

A. Yes.

Q. Now, on your third method of calculation as you applied it to this situation, what service life did you get under that one?

A. Approximately fifty-five years.

Q. Approximately fifty-five years?

A. Yes.

Q. Now, these, as I understand, were only guides to you?

A. That is true.

Q. But having arrived at these results, I suppose you followed a new formula beyond that point?

A. That is true.

Q. With these as guides and with the other circumstances that influenced your judgment, you finally arrived at a figure of fifty years?

A. That is correct.

Q. And it was after considering all of those things?

A. That is correct.

Q. And you would be unable to state as to just what extent any particular guide or element influenced your thought to enter into the final figure?

A. No, definite percentage was used in any investigation.

Q. It was these various ideas or elements that entered into your final figure in non-percentable degrees, if there is such a word?

A. That is correct.

Q. Now, when you say main lines, does that include the laterals?

A. No, sir, that includes the main line from the Arapahoe metering station to Cheyenne and the 2-inch Berthoud field line is also included under that heading.

Q. That being true, it would not include, for instance, all of the 8-inch line, would it?

A. No, sir.

Q. It would include a part of the smaller line below six inches in so far as the Berthoud field line is concerned?

A. That is correct.

Q. It would not include all of the 6-inch line, either, would it?

A. No, sir, only the portion extending from the Fort Collins measuring station to Cheyenne.

Q. To Cheyenne—other six-inch lines would not be included in your grouping of main lines?

A. That is correct.

Q. And the main line, then, you gave a service life, arrived at in your own manner, of fifty years?

A. That is true.

Q. Then on the lateral lines which included numerous sizes from eight inches down, I take it, you figured those lines at a service life of forty years?

A. That is correct.

Q. And in connection with those lateral lines, were any of the formulas used as calculating guides to you?

A. Yes, we went through the same procedure and used them as guides.

Q. And you calculated, I suppose, the service life under these various formulas with respect to these lateral lines, similarly, as in the case of the main line?

A. That is true.

Q. And did the service life that you obtained with respect to the main lines vary materially in the case of laterals? Take the first formula, you said you got approximately 137 years on the main line. What in applying that formula did you get as service life of the laterals?

A. Considering the laterals as a group and separate from the main line—

Q. Yes, that is what I mean.

A. —the first method gave us approximately 164 years.

Q. How much?

A. 164 years.

Q. Now, applying the second method to the laterals as a group and excluding the main lines, what service life did you get?

A. Approximately 92 years. I would like to say at this point that there is no consideration given here to a time limit. This is just an indefinite time period.

Q. With respect to the availability of gas?

A. That's correct.

Q. Now, by the third method, and applying that in your way to the lateral lines as a whole, what service life did you arrive at there?

A. Approximately 35 years.

Q. Now, going a little further to the transmission system measuring stations, within that group you covered, according to your statement, part of your Exhibit No. 200, you covered two measuring stations?

A. That is correct.

Q. And those stations were the Berthoud field and the Fort Collins division station?

A. That's right.

Q. Now, in connection with your study of those properties, did you consider the various elements that were detailed yesterday to which you gave consideration on the pipe line?

A. Yes, I would say we considered most of them.

Q. And in addition, did you have any further elements which you considered in connection with that? Perhaps I can make it more direct so as to save time. Were there any structures in connection with the measuring stations in question?

A. Fort Collins division metering station has no structure. Berthoud field measuring station does have a so-called structure.

Q. But of insignificant value?

A. Yes, sir.

Q. So that in considering those two stations you were dealing merely just with equipment?

A. That is correct.

Q. Now, then, did you consult manufacturers of equipment?

A. We took that into consideration.

Q. Did you also take into consideration the experience of other companies with such equipment?

A. To some extent.

Q. You did that to some extent, and added that to the elements which you previously detailed as having been used in connection with the main line study, so that all of these additional elements come in—these elements come in in addition to the other elements that you have already described, as I understand it?

A. That is true, but this is based more on physical lives.

Q. I mean, there is no percentages yet in this, either, is there?

A. No percentages.

Q. But you gave more weight to physical lives, is that right?

A. Yes. This is based primarily on physical life.

Q. And just what percentage of influence in your judgment these other elements had, you would be unable to state?

A. That is correct.

Q. I take it that you gave here, as you did in the other study, consideration to maintenance?

A. That's right.

Q. And did you compare that maintenance with maintenance of other properties that you had any knowledge of?

A. Oh, I think you more or less do that automatically. This company was taken on its own basis a lot.

Q. I suppose that you considered the history of maintenance by this company?

A. We knew what the maintenance had been in the past.

Q. Now, isn't there always a shadow line between what might be taken care of as maintenance and what might be considered wear and tear—natural wearout of parts of this type of equipment?

A. Well, of course, maintenance is designed to keep the—

Q. I appreciate what it is designed to do, but I asked you whether or not that might not be the fact.

A. There might be border-line cases. It's hard to tell.

Q. There usually are, aren't there, in this type of inquiry?

A. Yes, I think there might be.

Q. You didn't give much consideration to that, though, did you?

A. Yes, we considered what had been done in the past.

Q. How specifically did you consider that, Mr. Copp?

A. Well, as a matter of fact, there has been very few retirements or replacements of any consequence on this company's lines or stations, so it didn't play a very big part.

Q. So that what you considered as maintenance replacements played no substantial part in your consideration?

A. Will you read that question back, please?

(The question referred to was read by the reporter as set forth above.)

The Witness: Well, as I recall, there have been very few replacements, so naturally they didn't play a very big part.

By Mr. McCreery:

Q. So you say that that element—that consideration did not play any substantial part under the circumstances of your particular inquiry?

A. It was given consideration.

Q. Just what, you wouldn't be able to say?

A. That is right.

Q. Now we come to the compressor stations as a group. Those I take it consists both of structures and the equipment in those structures?

A. That is right.

Q. And in considering the structures, did you in addition to the elements which you gave consideration as you detailed yesterday afternoon, also communicate with manufacturers of material which would go into that type of building, such as steel?

A. Yes, that is right. I talked to the local manager of the Truscon Company.

Q. That being the company who had furnished the steel in the construction of these buildings, or they furnished similar materials, if they didn't furnish these?

A. Yes, these are Truscon buildings.

Q. You found from them what they estimated the service life of that steel construction to be?

A. They told me what their experience had been.

Q. As a matter of fact, you adopted that figure as your service life, did you not?

A. Not wholly. We considered it and gave it considerable weight.

Q. They gave you a figure of fifty years, didn't they?

A. No, they didn't give us a specific figure of that long.

Q. But you gave it a figure of fifty years?

A. That is correct.

Q. When you came to the equipment, such as engines and compressors, did you similarly communicate with the manufacturers of engines of that type?

A. Not directly.

Q. Not directly, but you gained what you considered was the view that they had as to the service life of that kind of equipment?

A. We had no direct communication with the manufacturers.

Q. I understand that you didn't, but you indirectly got their views upon that problem, did you not?

A. No, I wouldn't say that we did at all.

Q. What did you get indirectly in respect to their position?

A. We didn't get anything because we didn't communicate with the manufacturers—

Q. Directly, I understand—

A. —or indirectly, either.

Q. Did you base it on the experience of certain other companies?

A. We gave that some thought.

Q. Was there any particular company's equipment that you considered?

A. No, there was no specific company. We knew of several that had similar types of equipment.

Q. What companies did you happen to know of that entered into your thoughts in connection with this matter?

A. I know that the Hope Natural Gas Company has had equipment in service longer than this.

Q. That was in your mind?

A. That is right.

Q. What other companies, Mr. Copp?

A. Oh, I know that certain of the companies of the Columbia group—as to the specific company, I am not certain.

Q. I don't care about the names; I am just trying to get a general picture.

A. The Columbia—

Mr. Lange: The Columbia Gas & Electric Corporation?

The Witness: Yes.

By Mr. McCreery:

Q. Why I was inquiring was because in this study you had defined and given a non-percentage to those facts, the experience of other companies.

A. It was given consideration.

Q. You wouldn't again be able to say how much you gave to that?

A. No, that was an indeterminable amount.

Q. It is sort of like the cook giving a formula, you would add this and that and get the result; that is the way it was, wasn't it?

A. You might say so.

Q. I see you have shown on your exhibit here what is known and described as distribution plant. Now, as I understand that, you simply adopted whatever separation of facilities that had been made and given to you for that purpose by the accounting department?

A. That is correct.

Q. There is no engineering involved in the setup here of a certain property under distribution plant in so far as the engineering department is concerned?

A. That is correct.

Q. Did you follow the same course with respect to what is called distribution plant as you did with respect to the measuring and compressor plants in general?

A. Yes. In general the type of structures of distribution measuring stations are a little different than they are on the other two items.

Q. The distribution plant is almost entirely the meters at point of sale together with the necessary equipment attached to them?

A. That is right.

Q. So that is largely the meters at point of sale by the company to either its industrial users or its resale customers? In other words, direct sale customers such as the various public authorities? Isn't that in fact what was included in that distribution given to you by the accounting department?

A. Under the heading "Distribution Plant" are included the structures, the majority of which are owned by the company, and the metering and regulating equipment that is housed in those structures.

Q. As a matter of fact, wouldn't you perhaps desire to correct your statement as to ownership there? You don't know whether they were all owed by the company, do you?

A. I inquired as to their ownership. I understand there are several structures not owned by the company.

Q. You are stating that as a fact?

A. I prefer to let it stand as it is.

Q. That is your understanding?

A. Yes.

Q. Now, on your transportation equipment, that is the automobiles, I take it?

A. Yes, automobiles and trucks.

Q. You based your determination of service life, you stated, on the previous experience of the company with automobiles?

A. That is correct.

Q. And on that previous experience you simply set a service life of five years?

A. That is right.

Q. You didn't see the automobiles, did you?

A. Yes, sir, every one of them.

Q. What procedure did you follow with respect to office furniture and equipment?

A. We looked at all of the principal items. They are practically all housed in the company's main office in the Continental Oil Building. We studied the company's retirements, the ones they had had, and applied that where they were applicable. The equipment other than that we assigned a service life to.

Q. In assigning a service life, that was largely based upon your study of the company's previous experience with this class of property?

A. A great deal of it was.

Q. Was that similarly your practice with respect to the item called Miscellaneous Tools?

A. As I recall there was not much past experience on tools. There is not very much money in that particular account.

Q. I appreciate that amounts to just a few hundred dollars.

A. That is right. We applied what we thought would be a reasonable service life to that type of equipment.

Q. There is another small item, this communication equipment, which as we both understand is largely our telephone facilities attached to the structures of the Mountain States Telephone and Telegraph Company, isn't that true?

A. Yes, that is right.

Q. What did you do, base that largely upon what you considered the service life of the wire?

A. Yes, as wire and labor are the principal items in that account.

Q. Did you give labor the same life in your retirement procedure as you did the wire?

A. Yes, that is right.

Q. How did you determine the life of the wire, from what sources?

A. As I remember, the life assigned to wire was—the service life had been adopted by others.

Q. The experience of others under similar circumstances as you considered them *analygous*?

A. That is correct.

Q. You considered the life of wire of this type?

A. Of this type wire, yes.

Q. You did?

A. Yes.

(Vol. 67, pp. 9661-9676.)

* * * * *

Q. Mr. Copp, in connection with the service life given to the main transmission line and laterals of the Colorado-Wyoming Gas Company, as I recall you arrived at a figure of fifty years for the main transmission line and forty years for the lateral line as a composite figure.

A. That is correct.

Q. Are you familiar, also, Mr. Copp, with the similar study conducted with respect to the main transmission line and lateral lines of the Canadian River Gas Company and Colorado Interstate Gas Company?

A. Not definitely. I made none of the calculations on those companies.

Q. Without having made any of the calculations you were, nevertheless, familiar with the work that was being done by your department?

A. That is correct. I know generally what they are doing.

Q. Do you recall as shown by Exhibits 177 and 178 in these proceedings that the composite service life of the main lines of each of those two companies was also set at

fifty years and that the composite service life of the lateral lines of each of those companies was set at forty years, which is identical with the figures set up with respect to those two classes of lines of the Colorado-Wyoming Gas Company?

A. I only know that to be true of the main lines. I do not know that to be a fact for the lateral lines of either of those companies.

Q. Do you know as a matter of fact, that both the main lines and the lateral lines of Colorado-Wyoming Gas Company and of the two other companies named are wholly independent in construction, in size, in character of country traversed, in the maintenance that has been given to those lines during the period since their construction? In other words, that they are wholly separate in every respect and have been from the date of their construction to the present time?

A. I know, of course, that the same contractor didn't build Colorado Interstate Gas Company line or Canadian River Gas Company's line that built the Colorado-Wyoming Gas Company's line. As to the method of maintenance, I don't know too much about what is done on Colorado Interstate or Canadian River Gas Company's lines.

Q. And you don't know as to the difference in the size of pipe or thickness of pipe walls or anything of that nature when comparing the lines to the line of the Colorado-Wyoming Gas Company?

A. Generally in size of lines I know. I don't recall what the wall thickness is.

Q. They are larger lines?

A. That is correct.

Q. Does it occur to you to be more than a coincidence that these three studies should arrive at identical results with respect to these three separate and distinct properties?

A. They were worked entirely independent.

Q. There was no consultation at all?

A. Some of the people worked on the same ones, but I mean they didn't use the results of one company for another company.

Q. Did they start at the same point with each of the companies with some predetermination?

A. As to what the final answer would be?

Q. Yes.
A. No, sir.
Q. In so far as you know?
A. In so far as I know, they didn't.
Q. Now, in connection with your service life valuations on compressor station structure equipment and measuring stations, with respect to the various items of property prior to the time you arrived at your composite average, you generally put down a period of life in round numbers, didn't you, in all cases such as even zeroes of lives in years?
A. We assigned service lives to the various units comprising the items of property that you have mentioned. They were more or less in round numbers.
Q. Isn't that true with respect to every single one of the items in those classifications of property, that they were all round number figures without exception? Without looking it up, I will say "practically all of them," if it will save time.
A. If I may refresh my recollection a minute I can answer you more correctly.

The figures used before we arrived at the composite were more or less generally round figures.

Q. I don't know whether you answered the question or not. I asked you whether you considered it just a coincidence that the service lives attributed to the main lines and lateral lines of each of these companies—the composite service lives should be identical?
A. I think you could say that it was a coincidence if it came out that way.

Mr. McCreery: That is all, Mr. Copp.

The Trial Examiner: Do you have any redirect, Mr. Lange?

Mr. Lange: At this time we want to tender Mr. Copp with reference to any of the engineering matters that pertain to Exhibit No. 199 that counsel may want to interrogate him about. Those are matters that the accountants received from the engineers in that exhibit.

Mr. McCreery: The Wellington-Arvada compressing station transfer is what you refer to?

Mr. Lange: Yes.

Mr. McCreery: I think there is no inquiry on those schedules.

Mr. Lange: Very well, Mr. Copp may be excused from reference to that exhibit as well as Mr. Vaught on Exhibit 199?

Mr. McCreery: That is right.

(Vol. 68, pp. 9888-9892.)

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Commission Exhibit No. 201 (Appendix this Record).

Annual and Accrued Depreciation (Commission Ex. 201).

KENNETH L. SMITH, Examiner of Accounts, a witness on behalf of the Commission, presented Commission Exhibit 201, entitled, "Annual and Accrued Depreciation of Gas Plant Accounts and Examiner's Adjustments," Colorado-Wyoming Company, for the years 1926 to 1939, inclusive.

He testified as follows:

Q. Mr. Smith, you have been sworn and have testified in these proceedings, have you not?

A. Yes, I have.

Q. In your previous direct examination I asked you with reference to the period of time that you devoted to your portion of the accounting work on this assignment in connection with Colorado-Wyoming Gas Company, isn't that true?

A. I think possibly that question was directed to the whole assignment.

Q. Now, relating particularly to this assignment, rather to the portion of the assignment having to do with the preparation of an exhibit on annual and accrued depreciation of gas plant accounts and your adjustments, I will ask you whether in connection with that portion of the work you have any particular statement to make as to the character and kind of records found in the company's files, as well as the particular treatment or consideration you gave to that situation.

A. Well, I might make a general statement that wouldn't necessarily be limited to this exhibit.

Q. Very well, limit it to this company.

A. All of the accounting investigation on Colorado-Wyoming Gas Company was done either by me personally or under my direction and supervision. I spent about three or four months in the company's offices in Denver, Colorado, actually on the job examining records and making analyses.

In addition to that I probably spent another two months or three months exclusively on this company preparing reports and at all times the work was under my direct supervision whether it was carried out by Mr. Vaught or some other member of the staff. It might be appropriate to make some comment concerning the records of the company.

The Colorado-Wyoming Gas Company had not considered itself a public utility, at least prior to the passage of the Natural Gas Act, and so far as I know was not regulated by any regulatory body. Its records did not in my opinion meet with the standards that I have generally come in contact with in public utilities that had to meet the standards of regulation. I am not saying that in any reflection on anybody in the company or any reflection on the results which we have been able to work out. I merely mean to say that we had to approach the audit a little bit differently than if we had found all of the records and all of the support in the shape we would have liked to have found them, and we undoubtedly spent a great deal more time on that assignment than we would have if we could have located all of the records.

Now, in this, especially as we would expect to find in a larger company and one which was subject to regulation and maintained good records, particularly good plant records, Colorado-Wyoming Gas Company did not have a plant ledger. It had a work order system but it was not always possible to trace the entries on the ledger—on the vouchers into the final distribution that was made in the plant primary accounts, and it did not have a work order system for maintenance jobs. A great many transfers and some retirements of property were made without using a work order system, and we found in some of the earlier

rrcords particularly that there were certain stores tickets that we were unable to locate, and the supporting data for transfer vouchers which are nothing more or less than journal entries, called by the name of transfer vouchers—it was sometimes difficult to locate and there was considerable delay at times in having those run down by the company employes.

The company did not keep—did not have to show us time tickets on the work performed by company employes. That was not of a great deal of significance to us except that portion which was capitalized. They did have payroll distribution books. Undoubtedly there had been a basis for that record as recorded at the time, but the time tickets showing an absolute record of how the employes spent their time, particularly on capitalized charges, did not exist.

In the earlier days of the company a great many charges originated on the books of Henry L. Doherty & Company and those charges were transferred to the Colorado-Wyoming Gas Company without supporting data, simply a book entry, and of course that feature made it difficult from an auditing point of view.

I think those items that I pointed out will show some of the conditions from an auditing point of view that we had to deal with, and I think it has been appropriate to point these things out probably for this reason: In Mr. Vaught's testimony yesterday it seemed to me that the impression might have been left in the record that we went into the books of this company and took everything away from them that we could, and that, of course, is in my opinion not the way the record should stand. We did make certain adjustments which were reflected in Mr. Vaught's exhibit, and many many items we passed as proper capital charges, charges that originated in these records, or lack of records that I have just referred to, and worked with the company. When we felt as though they had given us the best they could in the way of support, we thought we were reasonable in passing a great many charges on which we weren't entirely one hundred per cent satisfied from an auditing point of view that the support was there or as to just what the charges actually were. It has not been a one-way proposition at all, and that is the reason why I

have taken this time to state it for the record in just this way.

So far as the company's effort to get information, they cooperated with us one hundred per cent at all times. We handled these matters informally and at the suggestion of Mr. Davis, Secretary of the company, rather than putting everything in writing, and I believe that the company produced every bit of evidence that they could. There was simply the fact that their records were not as good as they might have been if they had—particularly if they had been looking forward to this sort of thing.

Q. In other words, in connection with those items of information that you may have desired to complete your search, although the company supplied what it had, there were times when it did not have those records available—either they weren't in existence or they had not been kept in such form that the information could have been obtained?

A. Yes. The examples are stores tickets that were absolutely lost and we never did locate them—spent a great deal of time looking for certain matters. We did the very best we could and I think the company did too, but I didn't want the impression to stay in the record that it had been a one-way proposition. I think we did this audit on a give-and-take basis.

Q. And as I understand from your previous statement, you were in full charge of the accounting work in connection with this proceeding in so far as Colorado-Wyoming Gas Company is concerned?

A. That is correct.

Q. And all of its accounting exhibits in this proceeding with reference to that company were prepared under your direct supervision?

A. That is correct.

Q. Now, proceeding to the next specific exhibit; that is, the one which was prepared directly by you, I will ask you whether or not you prepared this exhibit on annual and accrued depreciation of gas plant accounts and Examiner's adjustments in connection with Colorado-Wyoming Gas Company?

A. Yes, sir.

Q. This is the exhibit which I now show you?

A. That is correct.

Mr. Lange: Will the reporter please identify it?

The Trial Examiner: It will be marked for identification as Exhibit No. 201.

(Exhibit 201, Witness Smith, marked for identification.)

By Mr. Lange:

Q. Mr. Smith, did you in connection with the preparation of this exhibit No. 201 also prepare a written statement which summarizes the contents of the exhibit and explains some of the details of it?

A. Yes, I have.

Q. Will you please proceed to read that written statement?

A. "This report sets forth the annual and accrued depreciation of the Gas Plant accounts of Colorado-Wyoming Gas Company for the years 1926 to 1939, inclusive. By account classification it shows annual accruals of depreciation based on service life estimates furnished by the Bureau of Engineering of the Federal Power Commission and also cost of property retired, salvage on retirements, and other credits, as adjusted by this and another Examiner.

"A comparison of reserve for depreciation of gas plant in service per books and that reserve as adjusted by the Examiner is as follows:"

Mr. Lange: Mr. Examiner, may that table be copied?

The Trial Examiner: Yes.

(At the direction of the Trial Examiner, the following table was copied into the record:)

"Components of Reserve for Depreciation
1926-1939

	As Adjusted by Examiner (Schedule No. 1, Column 3)	Per Books (Schedule No. 4)	Difference
Provision for Depreciation Charged to Expense	$423,617.24	$519,719.50	$ 96,102.26
Retirements			
Original Cost Retired	(37,477.38)	(40,853.22)	(3,375.84)
Salvage	7,523.39	7,539.39	16.00
Balance in the Reserve December 31, 1939	$393,663.25	$486,405.67	$ 92,742.42"

The Witness: "It will be noted that the great difference between the balance shown on the books as of December 31, 1939 ($486,405.67), and the accrued depreciation as of that date as *as* computed by the Examiner ($393,663.25) consists chiefly of the variation in the provision for depreciation charged on the books and the amount of the provision as computed by the Examiner, based on the service life estimates of the Bureau of Engineering."

By Mr. Lange:

Q. Right at that point, Mr. Smith, the service life estimate to which you refer are those heretofore set forth in the Exhibit No. 200 presented by Mr. Copp in this proceeding?

A. That is correct.

"The Examiner's adjustments of depreciation and accrued depreciation were effected through the medium of twelve journal entries, three of which, Entries Nos. 400, 401 and 402, were made by this Examiner, and nine of which were made by another Examiner. The entries made by this Examiner are contained in this report and the entries by the other Examiner in a report entitled 'Gas Plant Accounts and Examiner's Adjustments'."

Mr. McCreery: May I make this inquiry right here: This other Examiner referred to, I take it is Mr. Vaught?

The Witness: That is correct.

By Mr. Lange:

Q. And that is Exhibit No. 199?

A. That is correct.

"The chief function of the entries is the adjustment of the annual provisions for depreciation and, concurrently, so that it will properly reflect the depreciation legitimately accrued on Gas Plant, the Reserve for Depreciation. Those adjustments are necessary because the depreciation expense accounts and the reserve for depreciation are not stated on the company's books upon a consistent basis. The company used various annual rates and in two years, 1931 and 1932, made annual depreciation expense provisions pursuant to instructions received from Henry L. Doherty & Company, unaccompanied by any information as to rates or depreciable base used in developing the amount of the provisions. Moreover, effective January 1, 1937, the company arbitrarily reduced its annual provision for depreciation to $28,000 a year because it considered the reserve to be relatively large. In place of the company's provisions, the Examiner has substituted provisions developed by applying to the amounts in the gas plant accounts as adjusted depreciation rates based on service life estimates of the company's property furnished by the Commission's Bureau of Engineering."

Q. That again refers to Exhibit 200, as testified to by Mr. Copp in this proceeding?

A. That is correct.

"Entry No. 400 reverses the company's annual provisions for depreciation; Entry No. 402 sets up annual provisions for the years 1926 to 1939 based on the Bureau of Engineering's service life estimates and the gas plant accounts as adjusted; Entry No. 401 removes from the reserve the loss on the sale of land erroneously charged to it.

"Depreciation was computed for purposes of adjustments on the adjusted balances in each plant account. In a majority of instances the appropriate annual depreciation rate was applied to the adjusted plant account balance at the

beginning of the year. If a substantial item of plant was added during the year, depreciation, as a rule, was computed on that item in the year acquired for the actual number of months in service. All minor plant additions and retirements were, for the purpose of this study, ignored for the year in which they occurred. They were, of course, taken into account in succeeding years.

"Following the adjusting entries, on Page 4, appears Schedule No. 1. This tabulation contains for each major functional group of plant accounts the annual accruals of depreciation based on the service life estimates furnished by the Bureau of Engineering and the cost of property retired, salvage on retirements, and other credits, as adjusted. It shows gas plant in service divided into five classifications, i. e., Intangible Plant, Transmission Plant, Distribution Plant, General Plant, and Other. It also shows Gas Plant Held for Future Use.

"Two of the five classifications of gas plant in service shown in Schedule No. 1 are supported by schedules which give information of the kind shown on Schedule No. 1, by subclassification. Schedules Nos. 2 and 3 show five and four subclassifications of transmission plant and general plant, respectively. In turn, Schedule No. 2 is supported by Schedules Nos. 2-A and 2-B which classify main line into four sections and laterals into twenty lines, respectively.

"The information given on the first five lines of Schedules Nos. 1, 2 and 3, and their subschedules, is explainable as follows:

"Line No. 1, Original Charges per Books, represents the cost of the company's initial construction plus all additions. In most instances, the amounts on Line No. 1 may be arrived at by adding to the balance per books as at December 31, 1939, all retirements from the inception of the company to December 31, 1939.

"Line No. 2, Examiner's Adjustments, represents the net adjustments to the plant accounts made by the Examiner who prepared the report entitled 'Gas Plant Accounts and Examiner's Adjustments'."

Q. That again is Exhibit 199?

A. Yes, Mr. Vaught's exhibit.

"Line No. 3 is the sum of Lines Nos. 1 and 2 and represents the adjusted total cost subject to depreciation.

"Line No. 4 represents total retirements from the inception of the company to December 31, 1939, as adjusted.

"Line No. 5 is the difference between Lines Nos. 3 and 4 and represents the adjusted balance in the plant accounts as at December 31, 1939. The amounts on Line No. 5 agree with the adjusted totals exclusive of 'Gas Plant Adjustments' shown in Column 5 of Schedule No. 1 of the report entitled 'Gas Plant Accounts and Examiner's Adjustments'."

Q. Exhibit 199?

A. Exhibit 199.

"The depreciation rates used in the computations which appear in Schedules Nos. 1, 2 and 3, are based in general on service life estimates furnished by the Bureau of Engineering, but there are exceptions; depreciation provisions for certain major items of property that have been retired have been computed by the Examiner at rates high enough to cover the depreciation realized upon those items through their removal from service.

"The computation of depreciation on garage equipment, which is included in Schedule No. 3, was handled in a slightly but not essentially different manner than other depreciation computations. The total cost of the autos and trucks purchased in any one year was considered as a group cost, and after that group cost had been fully depreciated, which was usually about five years after the year of purchase, no more depreciation was accrued on that group.

"It will be noted that there were no charges to the reserve for depreciation for costs of removal. The company consistently charged these costs, which have been insignificant, to Expense. No adjustment for them has been made by the Examiner.

"Schedule No. 4 is an analysis of the Reserve for Depreciation for Gas Plant in Service, per books, for the period begun with the inception of the company in 1925, and ended December 31, 1939, and shows the debits and credits to the reserve classified by years in the manner set forth in the tabulation shown in this text, above.

"Schedule No. 5 is an analysis of the reserve for depreciation for gas plant in service, as adjusted, for the period begun at the inception of the company in 1925, and ended December 31, 1939, and is given by years. Its classifications are the same as the major classifications that appear in Schedule No. 1. The minor difference in the amounts as classified in this schedule and as classified in Schedule No. 1 and in the tabulation in the text, above, which is $118.35, is an amount transferred to Gas Plant Held For Future Use."

I think I will correct that to read: * * * transferred to Reserve for Depreciation for Gas Plant Held for Future Use."

Mr. McCreery: What words did you add there?

The Witness: After the words "transferred to," let's add in there "Reserve for Depreciation for."

The Trial Examiner: "Reserve for depreciation for"?

The Witness: Yes, I think that will make it a little clearer.

"Schedule No. 6 gives the net retirements of plant costs charged to reserve for depreciation, per books, and as adjusted, and provides a recapitulation of the Examiner's reclassification and adjusting entries affecting net retirements. It shows the amount of net retirements by years and supports Line 22 of Schedule No. 1. It provides a reconciliation between Column 4 of Schedule No. 4 and of Schedule No. 5, respectively.

"Schedule No. 7 sets forth salvage on plant retired, as adjusted, by years and by accounts; it supports Line 23 of Schedule No. 1. It provides a reconciliation between Column 5 of Schedule No. 4 and of Schedule No. 5, respectively.

By Mr. Lange:

Q. Mr. Smith, is there any other information or explanation that you desire to make in connection with this exhibit?

A. I don't believe we referred to the fact that the exhibit has been approved—

Q. Yes, on the title page bears the approval of Mr. Harold Tomlin, Examiner in charge of regional office, and

W. E. Baker, Chief Accountant, both of those men being connected with the Federal Power Commission in the capacities as stated on that title page.

A. Yes, sir.

Mr. Lange: I believe that is all for the present.

Cross Examination.

By Mr. McCreery:

Q. Mr. Smith, referring to Page 4 of the document marked "Exhibit 201," you state: "Depreciation, computed annually, based on service life estimates furnished by Bureau of Engineering."

At that point, as in your statement, do you there refer to Exhibit No. 200?

A. Yes, sir.

Q. All right, Mr. Copp's Exhibit No. 200.

A. That is correct.

Q. That is what you mean by that reference?

A. Yes, sir.

Q. Similarly on Page 6 where you again state: "Depreciation, computed annually, based on service life estimates furnished by Bureau of Engineering," your reference there to "furnished by Bureau of Engineering," relates to Exhibit 200 again, does it?

A. That is correct.

Q. Now, as I understand your statement in this exhibit, this is purely an accountant's computation aside from the plant adjustments. You have acted purely on the information furnished you through that Exhibit 200 on the subject of depreciation, annual and accrued?

A. There is one slight qualification to that which is covered on the top of Page 5, the latter part of that paragraph of my written statement.

Q. Yes, subject to that which refers to certain minor exceptions, there referred to?

A. Yes, sir.

Q. You have proceeded throughout on the basis of the depreciation study contained in Exhibit 200?

A. Well, what we have done is to take those service lives and apply them to the adjusted plant account on a straight line depreciation basis.

Q. You have taken the depreciation study of service lives and not only applied it to annual retirement, but you have also as a matter of accounting, prorated it year to year and applied it as accrued depreciation, is that true, from an accounting point of view?

A. Yes, sir. The annual provisions charged to expense are entirely consistent with the computation of the reserve balance.

Q. From an accounting and mathematical point of view?

A. What I was trying to think of, I don't see why they wouldn't be consistent from any point of view.

Q. I am not trying to limit you, but the first consistency we are talking about is that they are consistent from a mathematical and accounting point of view. I am not trying now to exclude anything else from your mind. We will come to that a little later, but that is the first approach of accounting, is it not, in this kind of a compilation?

A. Yes, sir. The annual expense and the reserve balance are the results of the same computation. We might put it that way.

Q. That is right. You have yourself in preparing this exhibit, you have not undertaken to enter into the question of actual accrued or any other type of depreciation as a physical problem, have you?

A. I don't understand what you mean by that.

Q. Have you undertaken in this exhibit to deal with the problem of depreciation as a problem of depreciation, not as a matter of accounting entries?

A. Yes, I have dealt with the problem of depreciation.

Q. Yes, all right. Now, so you have dealt directly with that and passed upon that yourself?

A. Well, perhaps from an accountant's point of view I have certainly dealt with the problem of depreciation, I hope.

Q. Based on the figures presented to you by the Bureau in Exhibit 200?

A. I have used their service life estimates.

Q. Yes, now, where did you proceed from there?

A. Based upon their service life estimates we computed straight line percentages for the annual provision and applied that to the original cost of plant.

Q. Which is purely a matter of computation?

A. Well, I wouldn't say it was purely a matter of computation. It is a matter of computation and it is a very

significant factor in stating properly the expenses of a company.

Q. I appreciate that. You took the figures that they gave you with the service lives they gave you and simply spread those out over the period, equally from year to year, did you not?

A. That describes the way in which the service life estimates were applied on a straight line basis.

Q. Your application of them, that's what you did?

A. Yes.

Q. Now, did you make any other determinations in that process?

A. Well, the reserve that we arrived at is automatically the expired service value.

Q. Did you embark at all on the field of engineering in this, or limit yourself strictly to the functions of an accountant?

A. I limited myself to the functions of an accountant.

Q. Now, you said there was some—you pointed out to me that there were certain special retirements there, and where do those appear, Mr. Smith? Is that on Schedule 6?

A. Well, they find their way into the computations on Schedule No. 2, Page 5, Column 6, which relates to compressing stations.

Q. Yes.

A. And, of course, they will be reflected in any other figures that Schedule No. 2 ties in with.

Q. Yes, that's right. What I would like to have you do is to explain that picture as you adjusted it in connection with this particular item, and for the information of the record.

A. Well, the service life estimates of the Bureau of Engineering in Exhibit 200 were related to the property in service, December 31, 1939. I think that was made clear in Mr. Copp's exhibit and testimony.

Q. Yes, that's right.

A. It was found that in analyzing the company's experience as to retirement and loss of service value in regard to the Wellington compressor station, due to the fact of certain changes and transfers and movement of equipment and other factors, that certain retirements had been made prior to 1939 which we felt should be taken care of.

Q. May I interpolate a question right there? Were

those retirements reflected in Exhibit 199 in connection with the entries with respect to the transfer of equipment from Wellington to Arvada?

A. They are reflected there, and in Exhibit 199 they relate to certain of those entries that you have not yet cross examined about, and another reflection of the same thing that I am talking about is on Page 5, Schedule 2, of Exhibit 201, Line 22.

Under Column 6 there it shows that there have been in excess of $24,000 retired from compressing station, original cost, and the net retirement on Line 24 of that same page, same column, is reflected there as $20,944.60. Now, those figures include the specific items that I am talking about which were taken care of, or in other words, a reserve was provided over the period that these retired units were actually in service and that was necessary in order that the reserve balance at the end of 1939 would be a proper balance because—

Q. In other words, to give you a proper book balance in that account?

A. Yes, and it was necessary in order to state the expense for the years 1939 and prior years, and it was also necessary in order to make proper use of Mr. Copp's service life estimates which were confined to the property in service on December 31, 1939.

Q. And you are now applying, as I understand it, those service lives as you compute them to property retired actually and on the company's books prior to that time, is that true?

A. No. That is where I make the exception. Instead of applying those service lives to these retirements which we thought were unusual, more or less out of the ordinary, instead of applying Mr. Copp's service life to those, we have taken the actual life of those units of property and written their cost off over their actual lives, all prior to 1939.

Q. Those lives in all cases, I take it, were shorter than the service lives set up in Mr. Copp's table, were they?

A. Oh, yes, considerably.

Q. Now, is the detail of those items set forth on Page 5 in Column 6 of Schedule 2? Are those set forth in Schedule 6 on Page 11?

Mr. Lange: Still referring to Exhibit 201?

Mr. McCreery: Referring still to Exhibit 201.

The Witness: Yes, sir. I believe we can relate those items, or at least most of them, to items that appear in Schedule No. 6, Page 11.

By Mr. McCreery:

Q. As I understand, and may I have this information, Schedule 6, at Page 11, includes also other items as well, does it not?

A. It includes—

Q. Additional items.

A. It includes all the retirements that have been made.

Q. That's right, in addition to the particular 24,000-odd hundred dollars referred to by you at Page 5, Line 22 of Schedule 2?

A. That is correct. There is a tying in figure for that $24,427.45, a cross-reference figure on Page 11, Line 14.

Q. Yes, and the total opposite "Compressing Stations" on Line 14 is the same figure.

The total all across that line produces the first figure, 24,000 some odd hundred dollars?

A. Yes, sir. Now, the specific items I was talking about comprise only a part, but the major part of the $24,000, and I think we can identify those up above—

Q. All right.

A. One of them—take Column 10 on Line 5, Page 11, that $14,205.97, that is a part of this exceptional treatment that I mention.

Q. That's Line 5, $14,205.97?

A. Yes, that enters into the—

Q. And what does that item consist of?

A. Well, in a general way that is installation charges and certain items of equipment which were lost when a considerable portion of the Wellington station—Wellington compressing station—or, rather, I should say the equipment in the Wellington compressing station, was moved to the Arvada compressing station in 1931. This particular part of the Wellington station was built in 1927, and then in 1931, several large units of equipment were removed to Arvada, and there was a certain amount of retirement loss

for installation charges and non-recoverable items that were simply lost in that transfer, and that is substantially what the item of some $14,000 represents. We have charged that off and provided for it over the years 1928, 1929, 1930 and 1931.

Q. Well, now, let me ask this question, Mr. Smith, to be sure that I fully understand your procedure:

Supposing that in the year 1930 Mr. Copp had made his study as to service life, and we will presume that having made that study at that time he would have found the same service lives that he now has set forth in his Exhibit No. 200; having found that, then thereafter in 1931, and this service life being what he describes as a composite service life of various types and groups of property, some of which he said would last longer, some which he said wouldn't last as long, and some which he said might hit the average according to my understanding of what he means by composite service life—having made that determination in 1930, we'll say, and proceeding similarly, and then in 1931 when the transfer is made of this equipment and these intangibles, as far as the installation as you state usually are lost, but they have to be duplicated again in the reinstallation to some extent, what would be done with that item of $14,000, then, having already set up a 50-year service life for these items of property? Would there be a special depreciation charge made or would it go into what you call the annual charge for the period divided by the number of years? You have made a special depreciation charge against the plant here. Now, under those circumstances would you have made that charge?

A. You mean to confine the charge to one year now, in 1931?

Q. Well, it happened this particular circumstance accrued in the next year—I don't care when it accrued, provided it was after these assumed determinations had been made. We will assume that the determination of service life had been put in full force and effect so that thereafter in 1931 by virtue of what occurred involving this $14,000 item, which you may call an unusual situation; being, of course, the revamping of the whole plant by which the former main plant and only plant became the tail to the dog, what would your treatment have been of that in 1931?

A. You are assuming, of course, that this circumstance that did occur in 1931 was not reasonably predictable in 1930 and therefore was given absolutely no consideration in the setting of the service life estimate?

Q. Well, I gathered from the testimony of Mr. Copp that he has tried to give some consideration with varying degrees of emphasis on practically every item he could think of, whether it was real or speculative.

A. You can't—

Q. You can't do that?

A. I think perhaps he has confined himself to things that are predictable or reasonably predictable.

Q. He said he gave slight consideration to washouts. You can't predict a washout. He said there was only one but he didn't think it was of much importance but it was one of the elements in his judgment figure and that is what he arrives at. That is not predictable, Mr. Smith.

A. Perhaps rather than get into a discussion of what Mr. Copp—

Q. Please don't misunderstand me. I didn't mean that. However, I don't want you to evade the question, either, at that point. What would you do in that kind of a situation?

A. I think, of course, the first consideration is what the service life estimate had contemplated with respect to that very thing.

Q. I presume the purpose of a service life estimate is to take into account all possible contingencies. No one can predict the present situation in the future, unfortunately, so the elements that enter into that are all of the elements that might occur. He is trying to set up, as I understand it, a safe situation of some kind.

When you predict a service life, these elements come in so we will assume with all of the foresight that it is possible for your engineering department to utilize it made a service life estimate in 1930 or 1929, or in any year prior to this particular year, and at that time the necessity of constructing a new line because of depletion of gas supply had not arisen. I will say that there is no question of depletion of gas supply in anybody's mind now. The matter has been considered and Mr. Copp said "I considered that matter and put it out of the picture," so at this time they consider the gas supply and rightly or wrongly put it out of the

picture. This thing arises after that time. What would be the procedure and what would you do under these circumstances?

A. I think I can answer your question if I can make one or two assumptions to see if they satisfy you.

Q. All right.

A. It has always been my understanding of a service life estimate that the engineer confined himself to the reasonably predictable; he didn't try to forecast the unpredictable, and that in any event in property of this kind he would give consideration to the supply of gas, either actual or potential, according to the circumstances, so if we can assume that this kind of a loss was an extraordinary loss that hadn't been contemplated in a service life estimate and was unusual, which I think this one is because of the short period of time involved, there is a provision in the Commission's Uniform System of Accounts for taking care of just such a situation.

Q. But this procedure, Mr. Smith, was followed prior to the passage of this act and prior to the promulgation of this Uniform System of Accounts, and neither the Department nor the Company at the time I suggested this thing might have occurred would have had the benefit of this Uniform System of Accounts, so we can't with our hindsight, which is always good, go back. We have to take it on some other view and it seems to me—go ahead with what you have to say.

A. I can state specifically with reference to your comment there that the Uniform System of Accounts reflect good accounting in this particular instance, I think, regardless of whether it was in force then or not.

Q. Isn't this a fact, too, Mr. Smith, that there could have been substantially different provisions in many parts of the accounts which would equally reflect good accounting but wouldn't reflect the kind of accounting that the Federal Power Commission wanted? It isn't the difference between good and bad accounting; it is the accounting they want, isn't it? This Uniform System of Accounts doesn't represent the bible of good accounting. There is a difference of opinion as to what should be and what shouldn't be. This is the view of the Federal Power Commission as promulgated in 1940, isn't it?

A. It is by far the best system of accounts ever set up for utility companies.

Q. I am not questioning you about that, but I say this: It doesn't represent the only system of accounting, does it?

A. The Uniform System of Accounts is the best system that has been heretofore adopted and it has been adopted by the NARUC.

Q. We didn't have the benefit of that, but you go ahead and say what you were about to say.

A. On Page 23 there is an account for extraordinary property losses. The use of that account as I understand it is when a company is faced with an unusual retirement loss that isn't provided for in its reserve for depreciation it may apply to the Commission to use this account, No. 141 which is a deferred debit account and then the amortization of that loss may be handled in a manner that is satisfactory to and approved by the Commission.

Q. Understand I am not making issue with this Uniform System of Accounts but I am undertaking to state that this appears to be and is in its nature a prospective operation. There have been numerous other systems of accounts that have been approved by the National Association of Railroad and Utility Commissioners and other bodies, so this isn't and hasn't a retroactive effect, has it? Do you understand it has?

A. So far as expense accounts are concerned, my understanding—I have reference to income and expense accounts—is that the natural gas companies started off in January 1940 with this Uniform System of Accounts. So far as plant accounts are concerned, it is in effect retroactive because it provides for making certain reclassifications and setting out certain significant items effective to the time that the property was first devoted to public service, regardless of who owned it.

Q. I appreciate that. Now let's get back to the question. What would be your answer to my question?

A. My answer is that any unusual property loss which is not provided for in the reserve for depreciation may be segregated and with the Commission's permission handled through Account 141, extraordinary property losses, appearing on Page 23 of the Uniform System of Accounts and that

that amount might be subject to some sort of an amortization upon the approval of the Commission.

Q. That particular section is a prospective operation, isn't it?

A. If you were confronted with this situation today, I believe you would—

Q. That is today. This situation confronted the company in 1931. Is that provision applicable to that situation in 1931?

A. The Uniform System of Accounts wasn't binding upon the company at that time.

Q. Not only was it not binding, but it was not in existence then.

A. It did not exist at that time. So far as the accounting principle involved is concerned, the accounting principle would have been applied and could have been very good accounting. Using an established fact, actual expense, I think these charges to income were expense for the years the property was in service. The company, if it had been confronted with this loss in 1931, might have accrued a little reserve more in the future to take care of it and that in my opinion would have been good accounting.

Q. Notwithstanding the prior determination of the service life that had been put in the annual charges?

A. I am assuming this is an extraordinary property loss.

Q. I am just trying to get your viewpoint on it. I am not trying to take issue.

A. I am assuming this is a loss which wasn't contemplated, the type of retirement that wasn't contemplated in the service life estimate—

Q. Perhaps it was contemplated but they were in error in the contemplation on the life of the field which is a possibility. In other words, in contemplating the life of a gas reserve it may be you are either too long or too short, so they may have contemplated it but may have been in gross error as to the final judgment arrived at and that would leave it in the situation where you would say that it would require and justify an extra treatment and a special retirement set up for the time?

A. Yes, that would be a question of fact. If the facts justified that, I think your accounting would be very simple.

Q. I am trying to get just what your view would be. So

even if you had set up your Uniform System of Accounts in 1930 or in any year prior to that time, and if this situation had arisen then, a departure from your annual retirement plan would have been entirely appropriate to meet that situation?

A. If the facts justified it being considered as an extraordinary property loss, that is correct; if it wasn't contemplated in your service life estimate and thereby in your annual provision, it wouldn't be proper to charge it against depreciation reserve. It should then be handled as a separate extraordinary property loss. As I see it, it is primarily a question of fact, not accounting treatment.

Q. There is no question in your mind but the fact that a fully developed system serving Fort Collins and Cheyenne from the Wellington field where the gas supply very rapidly became depleted, which involved the entire loss of that system or the construction of a very much larger system for which this would be the tail, was such a situation as that regarded as an extraordinary situation?

A. Well, certainly as related to the service life estimates that have been set up because the service life estimates made by Mr. Copp related only to the property which was in service at December 31, 1939.

Q. He has made of course, a composite estimate of all the property?

A. That doesn't make any difference.

Q. Some of which may last a very short time or become obsolete, or others may last a long time. He hasn't attached service lives to units of property if he has given a composite picture which is to cover the short and long time duration, as I understand it.

A. Yes, but he has confined his calculation to the property actually in service at the end of 1939, and so far as his calculations were concerned, these extraordinary retirements are out of the picture.

Q. He has applied it to the company's property since the beginning, or since 1939, hasn't he?

A. As of 1939, as I understand it.

Q. And certain parts of that property are to have a 50-year life?

A. That is my understanding.

Q. This situation that required the change from Wellington to Arvada was a very extraordinary situation in your judgment as a mater of fact?

A. It was an extraordinary property loss in view of the service life estimates which we are applying in this exhibit.

Q. But independent of any service life, you have to deal with it as a plain matter of fact, don't you?

A. That is what I said a while ago, the facts in a particular case would govern. As related to another set of service lives which contemplated this sort of thing and provided for it in effect, it might not be an extraordinary loss.

Q. In any event, this transfer of property, irrespective of service lives or anything else, is an extraordinary situation in the ordinary life of the company, isn't it?

A. You are branching out in a big generality now, aren't you?

Q. No. I want to get away from theory and get into facts. You said it was a question of fact, so I wanted your conclusion. Factually it would be an extraordinary situation in the life of this or any other company where that situation would arise?

A. Well, of course, I was referring to it as an extraordinary property loss, but in the light of the service estimates we have applied it here. As to going a step farther and reaching a generalization about it, I don't know of my own knowledge what the company thought the reserves of the Wellington field were when they started out in the business and whether or not the depletion of the Wellington field was an unusual circumstance or not. I think it would depend a great deal upon the company's expectation.

Q. If you didn't know that, Mr. Smith, how did you know it wouldn't be a normal picture of service life?

A. By the extraordinary property loss as related and determined by the service life estimates which have been set up and which are being used.

Q. But you said it would be determined by whether or not this extraordinary occurrence was contemplated in making up the service life. As I understand it, all normal developments are supposed to be included in the computation of service life, is that true?

A. Those that are reasonably predictable.

Q. Then to say it isn't in your service life, you have to first arrive at the conclusion it is an extraordinary situation, do you not?

A. If the situation develops, and it hasn't been included in the service life estimates, it is, of course, an extraordinary property loss, but I still don't think you see my point. I don't know whether the company—

Q. It doesn't make any difference what the company thought. You were determining this matter in the entry you were making. I am trying to find out what you determined, not necessarily that it might be right or wrong, but I am trying to get what your state of mind was.

A. The reason I have made the entries as I have made them is very simple. The service life estimates which were given to me did not contemplate or have anything to do with the property that was retired years ago and had gone out of service. It was related to the property in 1939 and it was an accomplished fact to work upon.

We knew the amount of expenditure that was lost. We knew it was in service over a certain time. We have a certain set of facts to make an accounting calculation and that is exactly what I have done. I have made the best computation under those circumstances, or possibly, under any circumstances.

Q. With respect to this property, not only this very extraordinary loss but all of the property prior to 1939 that had been retired, you do not apply the service life defined by Mr. Copp but you apply in every case the service life to that particular property as it is based upon its particular life?

A. I don't understand the question.

Mr. McCreery: Read the question, please.

(The question referred to was read by the reporter as set forth above.)

The Witness: If I understand your question, I think the answer is no. I will go ahead and explain it.

By Mr. McCreery:

Q. All right.

A. The only instances in which we have treated the items

as extraordinary loss have had to do with the retirements from the Wellington station which were related possibly to the transfer of equipment in 1931 and some other small retirements up there. There are other retirements which have occurred prior to December 31, 1939 which we have charged against the reserve as a normal retirement charge. In other words, we in effect charged them against the service life estimate furnished by Mr. Copp. It wouldn't be a correct statement to say we have provided for all of the retirements outside of the reserves provided through Mr. Copp's estimate of service lives.

We have charged some retirements against that, but not anything that we considered an extraordinary retirement loss.

Q. Were they retired on the service life basis built for that particular type of property in Mr. Copp's exhibit?

A. I believe so. I recall one instance—

Q. Why wouldn't they, therefore, be taken care of in your general annual retirement schedule as you have set it up beginning way back in the early years?

A. I don't think I understand that previous question.

Mr. McCreery: I will ask it again, Mr. Smith.

The Trial Examiner: Mr. McCreery, before you ask the question, let us take a five-minute recess.

Mr. McCreery: All right.

The Trial Examiner: We will stand in recess for five minutes.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

The Trial Examiner: The hearing will be in order.

By Mr. McCreery:

Q. Mr. Smith, referring to Schedule 6, Page 11, Exhibit 201, you have tabulated in Lines 13, 14, and 15, the various retirements of property classifications made during the years 1929-1939; that is true?

A. Yes, sir, and also Line 16.

Q. Lines 13, 14, 15, and 16. Didn't I say 16?

A. I don't think you did.

Q. It should have been included.

You are dealing here with a composite life of all the types of property that the company possesses in groups according to Mr. Copp's exhibit in which he assigns the various groups certain service lives. Items of property within each of these classifications were retired during the years 1929 to 1939. Were they retired actually by virtue of your entries here at an accelerated rate faster than the rate in the composite life conclusions arrived at by Mr. Copp?

A. You are confining that question to the retirements exclusive of the extraordinary items?

Q. I will leave that out for the present.

A. You will leave out the extraordinary items we have discussed?

Q. Yes. Answer the question with that assumption.

A. That would apply as far as Line 13 is concerned and a small portion of Line 14, and possibly a part of Line 16. Retirements were made before the property had been in service the number of years contemplated in Mr. Copp's composite service life estimate. It doesn't apply to Line 15 which is transportation equipment for this reason—

Q. Let's leave Line 15 out. It doesn't apply to certain of the items in Lines 13, 14, 15, and 16, in that certain of those items there were in fact given—not any of them were extraordinary items of retirement—a service life less than that set up for that class of property by Mr. Copp by reason of your entries here made?

A. I wouldn't say that they were given a service life less. We simply charged them against the provision, the reserve provided by the application of Mr. Copp's service lives for the reason we have considered them to be normal retirements. Some of them, of course, were replaced with the same kind of equipment and they were normal retirements which are expected to occur even in the early years of the life of the property and have been given consideration by Mr. Copp. I think he did consider the retirement experience of this company in setting his composite life, so this type of retirement which is not the extraordinary retirement we talked about early this morning, this so-called normal retirement charge, those have been weighted

in and considered by Mr. Copp according to my understanding of his exhibit, and I believe that is borne out in the testimony which he gave.

Q. That being true, I will ask this question, the question whether they have in effect been given in your computation of the property account of this company a shorter life than the composite life which would be applicable to them under Mr. Copp's exhibit?

A. I am not sure I understand what you mean.

Mr. McCreery: Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: You see I haven't given anything a service life in my computation. In effect what I have done is to make annual accruals for depreciation and then charge property retirements against that reserve, so I haven't given any life to anything. That is the reason the question wasn't clear to me.

I might state the situation in another way and that may answer what you have in mind: The record of the company to date does show it has had some retirements of equipment at the end of the period of service which is less than a composite service life assigned to that particular type of property by Mr. Copp. That is a fact. The record shows that. They have been very small in amount to date.

Q. What is the purpose, then, of these entries here detailed in Lines 13, 14, 15, and 16, aside from the extraordinary loss put in a separate place for the time being? Isn't the effect of it to produce an additional charge against the plant under Schedule 2, Page 5, in the amount of $20,944.60?

A. What line are you referring to?

Q. Line 24, Column 6.

A. You are now speaking of compressor stations?

Q. I am speaking of that particular item, Mr. Smith, which is shown in Line 14, Page 11, Schedule 6, which includes both extraordinary and non-extraordinary losses and retirements. Haven't you treated them both alike? Also in Line 24 you—I won't ask that question yet.

A. You asked the question whether I had treated them both alike?

Q. Yes.

A. Of course, my answer to that would have to be in the light of my previous testimony is that they haven't been treated alike because the extraordinary items have been provided for through accruals to the reserves separately and those that are not extraordinary have been charged against the accruals provided by the application of Mr. Copp's service life estimates.

Q. Well, now, in your item of $20,000, which starts with your item of $24,427.45, which $24,000 item includes both the ordinary and extraordinary retirements, you have in entering the charge on Line 24 made a net charge there against reserves in those items, both normal and extraordinary. Haven't you in effect treated them identically in building up your depreciation or reserve charge?

A. You are referring now to Page 5, Schedule 2?

Q. That is right.

A. As far as an accounting treatment is concerned, in charging them against the reserves, the retirement out of the plant on the one hand and making the charge against the depreciation reserve, the accounting treatment has been identical. Of course, they are all brought in here together because all of the retirements are handled through this one set of figures, whether they were extraordinary or normal retirements, but of course that doesn't tell the whole story.

Q. You tell the rest of the story so I may have it clear.

A. The rest of the story—I might refer to Page 5, Column 6, Schedule 2—is the accruals to expense, particularly on Lines 9, 10, 11—

Q. Accruals, that is your annual provision?

A. Yes, those items shown up there above—

Q. In what line?

A. Line 9—is for the year 1928 and Line 10 is for the year 1929; Line 11 is for the year 1930 and so on.

Q. Of course, Line 9 wouldn't be involved because in your Schedule 6, Page 11, you only go back to the year 1929.

A. You are confused there because even though the retirement wasn't made until 1929, we started accruing for some extraordinary items as early as 1927, and the largest, we started accruing for it in 1928.

Line 9, for 1928, is effective—

Q. But Line 9, 10, and so on, are not the company's figures. They are your application of the figures furnished by Mr. Copp, aren't they?

A. Referring to Column 6, only in part; that is, in addition to the figures supplied by Mr. Copp, we have taken care of the accruals for the extra loss through the same accruals.

Q. Is that in Line 9?

A. That is right.

Q. In other words, do I understand your figure $7,403.54—it being on Line 9, Column 6—in addition to reflecting what you stated at the head of it reflects something else? You say, "depreciation computed annually, based on service life estimates furnished Bureau of Engineering." Isn't that a computation from his figures which you have utilized in this exhibit, that $7,403.54?

A. No, sir, that is one of the figures subject to the qualification stated on Page 5 of my written statement that I referred to a moment ago.

Q. Could you furnish the work sheets for those figures during the noon hour to Mr. Jorgensen?

A. Yes, I will be glad to do that.

Mr. McCreery: If you will do that it may simplify what I am trying to learn, Mr. Examiner.

I had assumed that these figures covered just what I understood they were to include, but it seems there are some adjustments made in them and we would like to find out what they are. As to that part of the inquiry, if the working papers can be gone over with Mr. Jorgensen during the noon hour, I think we will save time. I may or may not have any further inquiry with respect to that.

Mr. Lange: They will be made available to you during the noon hour, Mr. McCreery.

Mr. McCreery: Thank you.

Q. Barring those special items, Mr. Smith, you have aside from that simply applied the figures that Mr. Copp has furnished you?

A. We have made our computations based on his service life estimate; if that is what you mean.

Q. That is what I mean. You have made that from year

to year at the same rate? You simply divided the service life into the number of years in that service life as applied to each group of property and applied that year after year on that basis, based upon the then capital account in that part of the company's property?

A. Yes. Putting it another way: We translated, for instance, a 50-year life on the transmission line to a straight line at 2 per cent per year and applied that 2 per cent per year to the original cost of the main transmission line as a group year by year.

Q. Simply as a matter of accounting practice?

A. Well, I don't think it can be dismissed quite that easily. We have done it from an accounting point of view and we have had definite objectives in doing that.

Q. I have no doubt of that, but I am talking of what you did. I wasn't asking about your objectives. I am saying in fact you did. Whatever your motives are, that is a matter for you to determine, of course.

A. All the work I have done has been strictly accounting work.

Q. That is what I mean. You simply as an accountant applied figures in these tables and in this manner to the figures furnished and the rates and service lives furnished by Mr. Copp?

A. Yes, based upon the service lives furnished by him. The rest of it is strictly accounting. The base is accounting.

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* * * * * *

He testified further, on applicable general accounting principles as follows:

The Witness: "The Commission's Division of Accounts, based upon its examination of the accounts and records of Canadian River Gas Company, Colorado Interstate Gas Company and Colorado-Wyoming Gas Company, respectively, has among other matters, prepared studies showing the original cost of the plant of each of such companies. The original cost studies so prepared conform generally to the principles set forth in the Commission's Uniform System of Accounts for natural gas companies.

"The approach followed in obtaining original cost has

been essentially an accounting approach. That is, the dollars accounted for as plant on the respondents' books have been reclassified or earmarked, as appropriate, or eliminated if the facts developed, as related to sound accounting, so warranted.

"An original cost study which disregards either wholly or in part the accounting results shown on the company's books is acceptable. This is a fundamental maxim in the practical application of the original cost principle. In other words, original cost in order to be valid must be obtained by an accounting method. It must conform to certain coordinated and consistent principles which are inherent in accounting theory and methodology.

"During the past five or six years a significant change has taken place in public utility accounting in the United States through adoption of uniform systems of accounts which embody the original cost principle or doctrine with respect to plant assets. With reference to the electric and gas utilities, such uniform systems of accounts have been sponsored by both the Federal Power Commission and the National Association of Railroad and Utilities Commissioners. Many state commissions have adopted systems of accounts embodying the basic principle of original cost. In fact, it is now estimated that 90 per cent of the electric utility industry, measured either by assets or revenues, is using some system of accounts which embodies the original cost principle.

"The Uniform System of Accounts for natural gas companies prescribed by the Federal Power Commission became effective on January 1, 1940 and reports indicate that the Federal Power Commission system and the system with which it is nearly identical, namely, the one adopted by the National Association of Railroad and Utilities Commissioners, are also rapidly attaining wide acceptance on substantially a national basis.

"It is also significant that the system of accounts prescribed in 1935 for telephone companies by the Federal Communications Commission recognizes the original cost principle. In 1935 the Interstate Commerce Commission prescribed a system of accounts for pipe line companies

which likewise recognizes the same principal although not called by that name. In addition, the system of accounts for water companies recommended by the National Association of Railroad and Utilities Commissioners also requires that the plant accounts be reclassified and kept in accordance with the original cost basis.

"The original cost principle is highly acceptable from the standpoint of accounting theory. The doctrine in itself or its accounting application does not add to or subtract anything from the plant accounts of a utility company; it merely *analyses*, classifies, and segregates amounts which are significant to regulatory bodies, investors, and even to management. It permits achievement of one of the fundamental objectives of good financial reporting through adequate and truthful disclosure of highly pertinent data.

"To understand the historical reasons for the adoption of the original cost principle it is necessary to understand the condition of utility accounts in general at the time the systems of accounts were under compilation some six or seven years ago. Many public utility accounts were in very bad shape. The tremendous amount of inflation disclosed by the Federal Trade Commission in its investigation of public utility companies is a matter of public record and common information to the industry.

"Regulatory bodies recognized as a result of that study that some sort of action was necessary or at least desirable to correct the abuses which had been disclosed. I know personally of many cases in which the property accounts were almost meaningless because of large unidentified amounts resting in lump sum accounts. I know of cases in which the investment in the various utility departments, such as electric, gas, street railway, and so forth, was not known by the management and of course, under such circumstances the cost of a particular generating station or transmission line was hopelessly concealed or buried. It was general knowledge among public utility accountants that retirements of property had been made by the utility companies without proper record, and that in many cases retirements were recorded at estimated original cost of

construction although the amount carried on the books for that property might have been much greater.

"One of the principal abuses in earlier utility accounting was in connection with acquisition of going concerns; that is, mergers, consolidations, and other property acquisitions. It was probably for this reason that the systems of accounts which have been recently adopted apply the original cost doctrine technically to the acquisition of operating units or systems. The original cost system furnishes a remedy that goes to the source of the evil because it provides that the cost to the person first devoting operating units or utility systems to public service shall be recorded in the detail plant accounts, and that any difference between such costs and the costs to the present owner shall be earmarked in specific accounts. In other words, the new systems, so far as the plant accounts are concerned, require first and fundamentally the reclassification or breaking up of the amounts appearing on the books.

"The original cost systems of accounts yield other benefits. Original cost is an element to be considered in the computation of the base rate, and the only manner in which original cost can properly be ascertained is by an accounting process. The condition of the records of many utility companies a few years ago did not permit this ascertainment within a reasonable time with a reasonable amount of effort and cost.

"Also of importance is that after the necessary information is available, through application of the original cost principle, proper regulatory steps can be taken to obtain sounder financial structures for a great many public utility companies. As soon as investors are assured of the absence, or at least the disclosure, of inflation in public utility capital accounts, money should be attracted to the industry more easily and at a lower cost. The original cost scheme is the only scheme in my opinion which can accomplish these objectives.

"The systems of accounts prescribed by the Federal Power Commission, as well as those promulgated by the National Association of Railroad and Utilities Commissioners, definitely prohibit the recomputation of the cost of

the company's construction as of the effective date of the system of accounts, when such construction was accounted for in accordance with the system of accounts in effect at the time or in accordance with the discretion of management as exercised under the board principles of accounting.

"Gas Plant Instruction 2-B of the Federal Power Commission system of accounts for gas utilities contains the following definite language:

> "'* * * It is likewise not intended that adjustments shall be made to record in gas plant accounts amounts previously charged to operating expenses in accordance with the uniform system of accounts in effect at the time or in accordance with the discretion of management as exercised under such uniform system of accounts.'

"A similar provision is in the system of accounts for electric utilities and licensees.

"It has been the consistent interpretation of the Federal Power Commission's Bureau of Accounts, Finance and Rates, of which Mr. Chas. W. Smith is the head, that Instruction 2-B prohibits any restatement of plant costs if such costs were in accordance with generally accepted principles of accounting at the time when recorded.

"The National Association of Railroad and Utilities Commissioners has also been emphatic in its interpretation of Instruction 2-B. The following language is used at Pages 9 and 10 with reference thereto in a publication entitled 'Statement Relating to the Original Cost and Reclassification of Utility Plant Pursuant to the Provisions of Uniform Systems of Accounts for Electric, Gas and Water Utilities,' revision of September 20, 1940, prepared by the Committee on Statistics and Accounts of the National Association:

> "Restatement of costs based upon revised allocations of joint expenses (expenses applicable to construction and operations) cannot be permitted. Two self-serving, self-impeachments must be guarded against: "our records are in such bad shape that we cannot determin the cost of our property from our books and records"

and "we have not in the past properly distinguished between construction and operations and construction and maintenance."

"' * * * The intent of the reclassification is to reclassify the dollars in the plant account as of the effective date of the system of accounts to the new accounts. This process is a reclassification and not a reaccounting. The utilities are required under the system of accounts to reclassify the dollars in their plant accounts as of the effective date thereof and not to compute a hypothetical original cost of property constructed by them.'

"The uniform system of accounts promulgated by the Public Service Commission of New York for gas companies is even more rigid than the provisions referred to above of the Federal Power Commission and National Association systems. Gas plant instruction 2-F of the New York system provides as follows:

"'Nothing herein stated shall be taken as permitting the recording as part of the original cost of gas plant of amounts charged in previous years to operating expenses, operating taxes, or other income or surplus accounts.'

"From the foregoing language it is clear that the New York system specifically prohibits the restatement in plant accounts of any item heretofore charged to any part of the income account or to surplus, even if the charge was purely an accounting error.

"The position taken by the Federal Power Commission's accounting division and by the National Association of Railroad and Utilities Commissioners, indicated above, has positive sanction in accounting theory. They seek to prevent what would be the equivalent of writing up plant accounts and certainly the latter is one of the worst abuses in utility accounting.

"To understand completely why the interpretations of the Federal Power Commission's accounting division and the National Association represent sound accounting practice, it is necessary to understand some of the fundamentals pertaining to the basic nature of accounting.

"Accountancy as applied to a business entity, in brief, deals with proprietorship, or the assets represented by proprietorship, and their changing amounts as measured in units of money. Of primary importance in the accounting process is the assigning or allocating of costs to or matching of costs with, revenues. This phase of accounting has been described as 'crucial' from the standpoint of periodic income measurement and admittedly it comprehends most of the difficult problems of accounting analysis. Accounting employs innumerable details in its processes and furnishes vital information to business management and proprietors but its central purpose is cost accounting, that is, determination of the cost of doing business—the cost of obtaining revenues and the resulting profit or loss, or income.

"Contrary to the belief of the uninformed layman, accountancy is not an exact science. Every qualified accountant appreciates how utterly true this statement is. Accounting principles and practices are based to a considerable extent on logic, but its philosophy is also influenced tremendously by convention and tradition.

"Although accountancy is far from being an exact science, it is nevertheless a well-developed science. Its mechanisms are unavoidably very complex for a large business organization. The mechanics of accounting as practiced are far from being uniform.

"As to its broad fundamental principles, however, the science of accounting is about the same everywhere, but even those board fundamental principles are not inflexible in their detailed application. In fact, much choice and discretion are permitted management and accountants within the scope of those broad principles. To illustrate this point, it is fundamental in accounting that inventories of merchandise, supplies, and so forth, when existent, should be included in the balance sheet and proper effect given in the income statement. The method of pricing the inventories, however, is subject to wide variation and to much discretion or choice. Department stores, for example, use a statistical method in pricing their inventories; some businesses use a first-in, first-out method, whereas others

use the last-in, first-out scheme. Some businesses state inventories on the basis of cost or market, whichever is lower, while others use cost, and in some cases where inventory costs cannot be obtained, market value less estimated selling expense is used. The Federal income tax regulations for many years have permitted wide discretion in pricing inventories, but it is significant that no change in method of pricing may be made without obtaining special permission from the Commissioner of Internal Revenue.

"In the extractive industries it has long been accepted accounting practice to charge substantial replacements of plant to expense just the same as in many jurisdictions, and in England it is accepted law for the extractive industries to pay dividends out of capital. In fact, the extractive industries, because of the nature of their undertakings, quite generally charge items to expense which would ordinarily be charged to capital or plant accounts in other business enterprises. There is good reason for this, of course, from the standpoint of business policy, and the practice if followed consistently yields satisfactory and sound accounting results which are generally accepted.

"One of the characteristics of public utilities is their relatively large investment in plant assets. A tremendous amount of accounting, revolves around such assets. Considerable discretion has been allowed in the past and is still allowed the management of a particular utility company in accounting for its investment although obviously the natural tendency of regulation is to restrict the area of managerial choice.

"While considerable variation has existed in individual policies of accounting for plant items, accountants have been equally willing to certify to financial statements of companies which have followed different methods or policies. They have been right in doing so, because the general or accepted principles of accounting do not lay down one and only one inflexible rule. Any practice may be right if it is within the limitations of the broad scope of an accounting principle and is followed consistently.

"The reason for this condition is that accounting, to

repeat and to re-emphasize, is not an exact science. With this, any qualified accountant will agree.

"As to many items which are charged to the accounts, the question is not what treatment is absolutely right or wrong, but rather which is the preferable practice; and the treatment adopted for individual items is not nearly so important as consistency in the treatment of all such and similar items.

"This necessitates a few words relative to the importance of consistency in accounting. When a public accountant certifies to financial statements, he invariably makes a positive affirmative assertion that the statements have been prepared in conformity with generally accepted accounting principles applied on a basis consistently followed. Any departure from consistency requires a qualification in the auditor's certificate. This reference to consistency is contained in the form of certificate approved by the American Institute of Accountants. It is in widespread use, as reference to the annual reports of almost any corporation having listed securities will disclose.

"Consistency is vital to the integrity of financial statements. It is absolutely essential that the accounts which underlie the balance sheet and income statements be kept at all times in accordance with consistently applied principles and practices, for otherwise distortion, manipulation and untruthfulness, consciously or unconsciously, would result.

"One of the more common misconceptions of accounting among the uninformed is that the two principal financial statements, the balance sheet and income statement, are not related. This misunderstanding where present is indeed unfortunate. These two statements are very closely related and this relationship is always present, consciously or unconsciously, in the minds of accountants. In fact, this is fundamental in the science of accounting.

"It is one of the first principles taught to students of accounting and represents something they are never allowed to forget, either during instruction or in practice. A particular charge may be recorded in an account of either

statement but not simultaneously, that is, duplicated, in the accounts of both.

"Charges are frequently made to balance sheet accounts and then subsequently prorated or allocated to income accounts of different periods. This process is going on all the time as one of the essential routines of accounting. It is important that accountants, analysts, and others who use accounts do not forget the relationship of the two statements by focusing attention exclusively on one or the other even momentarily. Such a misconception may result in distortion and serious error.

"The relationship of the vital principle of consistency in accounting to any proposed reaccounting or restatement of items charged to expense in the past is very clear. It means, in my opinion, that costs which were recorded in the past in accordance with accepted principles of accounting at the time may not now be reaccounted for and the election at the earlier date annulled merely because of a change in view or purpose.

"The very nature of business transactions makes it mandatory that consistent accounting principles and practices be followed. As to many expenditures there is no sharp line of demarcation between operating costs and capital costs. It has constantly been recognized by accountants and acknowledged by the courts that it is often difficult to draw a precise line between expenditures for construction and those expenses which are incidental to operating or maintaining the plant. Hence a great deal of discretion, that is, managerial discretion, must be exercised in each determination of costs. Practical methods vary not only among industries but also within any particular industry. This in itself is not objectionable. The important thing is that some acceptable method be adopted and adhered to consistently, changes being made whenever advisable for the future and proper publicity given to any change of method.

"The problem of matching costs with revenues is not simple in practice. Many costs are joint costs in one way or another, that is to say, they consist of expenditures incurred which represent services applicable to two or

more items or functions. Some of the costs of manufacturing industries are allocated to as many as hundreds of products. The cost of hauling different classes of freight is a problem of joint costs which still defies practical solution. The cost of distributing electricity is so difficult of determination that very few cost studies have ever been published in connection therewith. The reason is joint costs. The most common joint costs are overheads or indirect costs. Overhead or indirect costs are costs which are not incurred directly or solely for an individual item or function. Therefore, overheads must be allocated or prorated on some basis to the several items or functions to which they are related.

"There is not just one and only one acceptable method of allocating or prorating overhead costs. Many methods are in practical use. Great choice is allowed in the field of accounting and management. No system of accounts prescribed by any regulatory commission, to my knowledge, lays down the basis or method which must be followed in making distribution of overhead expenditures. It is important that the method of allocation be equitable and that reasonably accurate accounting results be obtained, but further than this the various uniform systems of accounts are silent.

"It is not necessary under accepted principles of accounting that overheads, such as general and administrative expenses, be classified as construction overheads at all. When an industrial or commercial concern constructs a new plant, it does not usually charge to the cost thereof any amount for regular officers' salaries, even though officers whose compensation is normally charged to the general and administrative expense accounts spend considerable time in supervising the construction work. The classification of accounts prescribed by the Interstate Commerce Commission for steam railroads prohibits the allocation of general and administrative expenses to construction. General and administrative expenses go on generally in the same amount whether or not any construction is in progress, and there is good logic to support the principle that only such part thereof as is incurred specifically for construction purposes should be capitalized.

"For several years during the late 1920's and the earlier 1930's, while associated with public accounting practice, on numerous occasions I examined the records and the accounting practices of companies in the extractive industries, particularly coal mining companies and natural gas companies. These engagements included comprehensive annual audits of the accounts of such companies, investigations in connection with acquisitions of such properties, and preparation of their Federal income tax returns. As previously stated, the extractive industries frequently charge many items to current expenses which other industries, particularly the utility industry, would likely charge to plant. Generally speaking, the extractive industries are and have been much more conservative in charging items to plant than other business enterprises. There is a decided tendency on their part, well supported by accounting principles and practices, to charge items to expense rather than to plant.

"One theory of accounting followed by a great many coal mining companies, representing the views of able management and accountants in that industry, involves charging directly to expense any addition of property or plant or other expenditure required to maintain the productive output of the mine. This often includes large units, such as locomotives, cars, and long stretches of new track, and large amounts of related development costs. This practice has been accepted by the Bureau of Internal Revenue for income tax purposes, if followed consistently, and was upheld in the courts.

"For many years it was practically the universal practice of natural gas companies, and I understand it is still the practice of some oil companies, to charge what are termed 'intangible drilling and development costs' to expense. These items are wages, fuel, repairs, hauling, supplies, and so forth, incident to and necessary for the drilling of wells, preparation of wells for production of oil and gas, and similar expenses for gathering lines. To a much less extent the cost of labor in laying transmission and distribution lines as distinguished from gathering lines was also charged to expense. I do not believe, however,

that this latter practice was very widespread. In the past natural gas companies have been more reluctant than electric utilities to charge overhead costs to plant accounts.

"The so-called intangible drilling and development costs have been charged to expense under the principle that they represent cost of keeping up and maintaining the business rather than the cost of improving it or adding thereto. The accounting practice is based upon the reasoning that the cost of drilling wells and laying gathering lines are for the purpose of maintaining a supply of gas and not adding to that supply. It has been pointed out that the old wells were being exhausted and new wells had to be drilled in order to maintain the supply of gas for customers. The cost of materials such as pipe, casing, and so forth, could be salvaged later but the miscellaneous charges I have mentioned have no salvage value. Hence only the cost of material could be capitalized under the principle referred to above. The principle and practices applied represent sound, accepted accounting if adhered to consistently.

"In the early income tax laws, such as the Revenue Act of 1918, the problem of accounting for the so-called intangible costs arose. Article 223 of Regulations 45 relative to the 1918 Revenue Act specifically allowed natural gas companies the option of charging such items to expense or of capitalizing them. However, once the taxpayer had exercised his option, he was required from then on to follow that method consistently. It is a basic philosophy of the income tax law, that the taxpayer's accounting method should be followed for computing taxable income unless his method clearly does not result in the true income.

"Numerous authorities have sanctioned the charging of intangibles to operating expense. The Public Service Commission of West Virginia and the Public Service Commission of Indiana have allowed such items as expenses in rate proceedings. Under the present uniform system of accounts for oil companies issued by the American Petroleum Institute, it is permissible to charge the items in question to current expense by means of a reserve account. When the Public Utility Commission of Pennsylvania had

under consideration in 1919 a system of accounts for natural gas companies, the accounting committee of the Natural Gas Association of America appealed to that commission to include drilling costs and the costs of laying gathering lines as current expenses.

"The foregoing indicated accounting practices of the extractive industries conform to sound accounting principles even though they differ (for good reason) from the practices followed by most other industries. These practices are and have been very widespread and we may, therefore, characterize them as general practices in the extractive industries. They have long represented accepted principles of accounting and have been the basis of reports to investors, prospectuses, security listings and income tax returns. The only reason that some of the natural gas companies do not follow the same practices today, in my opinion, is that systems of accounts prescribed by regulatory commissions having jurisdiction require a different practice.

"The fact that the new systems of accounts do not permit continuation of some of the former practices is not any indication that they were wrong or unacceptable. Uniformity in regulation of utilities is generally considered desirable and with that in mind accounting methods deemed preferable have been written into the systems of accounts effective as of specified dates, but not made retroactive prior to such dates.

"In order to understand more clearly the significance of the foregoing discussion it is necessary to consider the relative importance of the income statement as compared with the balance sheet and particularly the plant account.

"The accounts which are reflected in the income statement, that is revenue and expense accounts, are the media through which costs are matched against revenues. Here is indeed the crux or the central problem of accounting, the pivot around which all accounting phenomena revolve. Professor Paton has recently expressed the same idea in slightly different language as follows: (See page 7 of 'Recent and Prospective Developments in Accounting Theory' by William A. Paton, published by Harvard University Graduate School of Business Administration, 1940)

Supreme Court of the United States

OCTOBER TERM, 1944

No. 575

COLORADO WYOMING GAS COMPANY,
PETITIONER,

vs.

FEDERAL POWER COMMISSION, COLORADO INTERSTATE GAS COMPANY, CITY & COUNTY OF DENVER, COLORADO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 16, 1944.

CERTIORARI GRANTED NOVEMBER 13, 1944.

Testimony of Commission's WITNESS SMITH (Continued).

"'Costs' rather than 'assets' is the significant term in present day accounting. Costs are incurred and are charged to cost accounts. From time to time the pool of costs is analyzed for the sake of determining the charges to be applied to current revenues on the one hand and prospective revenues on the other. After absorption of the expired costs the amount to be deferred emerges as an 'asset' balance.

"This means that the income statement is much more important in accounting than the balance sheet because the latter is only incidental to the truly essential accounting processes which are related and expressed in the income statement. The balance sheet comes into existence mainly because of the necessity of periodic reckoning, that is matching of costs against the revenues of a particular period, and the attendant deferring and accruing of costs.

"This increasing recognition of the greater importance of the income statement has been inevitable as generally better understanding of accounting principles has gradually evolved. Qualified accountants have recognized the importance of income accounting for many years and it is believed that laymen now have attained a much better understanding of this real emphasis of accounting.

"Because of the fact that matching costs against revenues is the central focus of accounting it is more important that all expenses be included in the income statement than it is for every conceivable item to be charged to plant. A company which follows the practice of ascertaining all costs which under some theory may be called plant costs, while leaving out of consideration the setting of accounting transactions when they occurred and ignoring the expense side of the problem, does not follow good accounting. Its accounts are biased, not wholly truthful, and to say the least the company is guilty of false emphasis. It is more logical and much better accounting to follow the principle of making sure that all the expenses are accounted for as such and of considering the residual costs as plant rather than vice versa.

"Consistent adherence to a sound scheme of account-

ing can result in no duplication of costs. Once a cost is matched against revenue it disappears from the books, so to speak, because its expiration is recorded as an accomplished fact, that is as an expense. Under proper accounting this expense or expired cost cannot at some future date be reinstated as a legitimate cost and again matched against revenue as a legitimate expense. This likewise prohibits such a cost from being restated to the plant account because that treatment presumes that the cost would be subject to depreciation which would mean that the cost would ultimately be matched in segments against revenues of a succession of periods as a result of the annual depreciation charges. This too would be a clear duplication of costs.

"Departures from coordinated and consistently applied accounting concepts in making original cost studies often yield results which are inaccurate. An original cost inventory and valuation which ignores the fact that certain items were charged to expense on the company's books is not valid. One typical example will show how false a result can be obtained by improper methods. A pole which is rotten at the ground line is saved for the time being by the installation of a stub. The cost of the pole stub is a proper maintenance expense charge and is generally so considered by accountants. It would therefore not be a proper charge to plant. However, a valuation man in taking an inventory sees the pole stub and may assign a value thereto and include it in his original cost estimate. Obviously his method would result in duplication and falsification in the company's accounts. This is but one typical example of numerous similar possible misapplications of the original cost principle. Another way of illustrating this same possibility of error is to visualize what would happen if two men were sent out independently of each other, one to compute all the expenses which by any stretch of the imagination could be called expenses and the other to compute plant costs with instructions to include every conceivable item which could be termed plant cost. It is apparent that their results for the same company would show much overlapping and duplication. This would come about because each would place emphasis on only one side of the transaction. Each em-

phasis would be a false emphasis and it is probable that each result would be incorrect.

"May I repeat and re-emphasize at this point that an original cost study to be valid must conform to consistent accounting principles and if proper results are to be obtained the transactions entering into such a study must be viewed in the light of all their atmosphere and settings both individually and as an interrelated whole.

"Reproduction cost new studies which include a value for items which were charged to maintenance on the company's books also violate one of the principles of logic that dominate the science of accounting, that is, that the same expenditure may not be considered both plant and maintenance. It may be either capital or expense but it cannot be switched from one to the other so as to best fit the particular occasion or purpose.

"Another particularly unsound practice which violates the accounting principle that costs which have been accounted for as expired may not now be reinstated as capital, is for a utility company to claim in computing its rate base observed depreciation which is less than the accrued depreciation computed on its books as a result of annual accruals to expense.

"So far as accounting is concerned this would have the same effect as adding to the plant account items which had been charged to expense during prior years. In either case it would constitute including in the rate base charges which had been made to expense in previous years, which had been already matched against revenue and had therefore expired in view of the company's accounting practices as exercised under the discretion of management."

(Vol. 58, pp. 8269-8294.)

* * * * * *

Do you know as a matter of fact that this so-called forgiven account was taken over and paid by the Public Service Compny of Colorado?

A. I had some information on that which I found by reviewing my working papers. I will show you exactly what

I had on that. Of course, it wasn't particularly concerned with what happened to the Public Service Company of Colorado—

Q. I understand that but I just asked you whether you knew that to be a fact.

A. The only information I have on that particular angle of the transaction; that is, anything that took place outside of the books of the Colorado-Wyoming Gas Company, was what I got out of the Federal Trade Commission's reports, Volume 66, and it states in there on Page 953 at one place:

> "On September 1, 1931 Cities Service Company transferred the stock of Colorado-Wyoming Gas Company to Public Service Company of Colorado, a subsidiary of Cities Service Power & Light Company, which in turn is a subsidiary of Cities Service Company, for $2,675,000. This price reflected an intercompany profit to Cities Service Company from the transaction of $1,027,429.57."

Q. Now, if you will go back to my question. Do you or do you not know whether this particular account which you say was forgiven was in fact paid by Public Service Company of Colorado?

A. That is what I am getting around to.

Q. All right.

A. It is my interpretation this $2,675,000, assuming the Federal Trade Commission data are accurate—

Q. You are just giving the data you have?

A. From the Federal Trade Commission's reports.

My interpretation is that the $2,675,000 which Public Service Company of Colorado paid for the stock of Colorado-Wyoming Gas Company in effect covered the payment of this debt to Henry L. Doherty & Company or the Cities Service Company, whichever one had put the money. Apparently Cities Service Company put the money up to Henry L. Doherty & Company, and Henry L. Doherty & Company put it up to Colorado-Wyoming Gas Company.

Q. And the Public Service Company in the acquisition and purchase of the stock as you have it here took over and paid this account referred to in Exhibit No. 137, that is your understanding of it?

A. I could make that interpretation of it, I think. It was covered in the $2,675,000 they put up.

Q. That is your understanding of what took place, just as a factual matter?

A. Yes, based upon the Federal Trade Commission data. Of course, that doesn't have any effect upon the accounting on the books of the Colorado-Wyoming Gas Company.

Q. I understand that. I am just asking you about the transaction, as to what was involved at the time of this so-called forgiveness of debt.

A. That is what I had on it and I find I extracted those notes as one of the first things of the audit in June 1939. That is one of the first notes I made.

Mr. Lange: Was there anything else with reference to that written statement, any further explanation that you have to make there concerning Exhibit No. 137?

The Witness: You might turn to Page 3, the next to the last paragraph on that page, or the last paragraph in that particular section.

I think that statement was challenged in my cross examination when I first offered the exhibit. I didn't have the means at that time with me of showing that my statement was true. I make this statement: "Inasmuch as the capitalization of the Colorado-Wyoming Gas Company has never included any securities other than the no par value stock referred to above—" meaning $1,501,000—"it may be said the corporation financed its construction program principally through cash advances from Henry L. Doherty & Company."

Of course at that point I am referring back to this debt that was forgiven and to the advances which I referred to earlier in my testimony today.

Then I make this statement: "The capitalization of $360,924.33 of earned surplus is evidence of investment in fixed assets of funds obtained from earnings."

I take it that is more or less self-evident now in view of the fact I have shown the total advances from Henry L. Doherty & Company were somewhat less than the amount

which eventually went into stock, and in addition the Colorado-Wyoming Gas Company had repaid more than a half a million dollars of those advances. Of course, it is my position, which I think is absolutely self-evident, that the stock dividend of $1,500,000 consisted of the donated surplus of $1,139,075.67 resulting from the forgiveness of the debt and that the rest of it, the remainder of it, must have consisted of earned surplus which the company had earned prior to December 1931 in the amount of $360,924.33.

Then I make the further statement in that paragraph:

"It also would appear that a considerable portion of the funds resulting from the accumulation of a depreciation reserve has been invested in fixed assets."

That statement was challenged and not having a balance sheet before me at the time I was not able to show exactly why that statement is true.

Taking the company's balance sheet in their Exhibit No. 242, I think I can demonstrate in just a few words why that last sentence is absolutely true and correct. This balance sheet, the last two pages in Exhibit 242, carried down to December 31, 1940, shows—

Mr. Lange: From what exhibit are you reading?

The Witness: Exhibit No. 242, the company's exhibit, Mr. Davis' latest balance sheet.

It shows a total ultimate plant investment per books of approximately $1,900,000. For our purposes here at this point we can assume that that statement is the correct amount for plant, even though our Exhibit 199 shows and identifies the writeups in that—

By Mr. McCreery:

Q. What do you mean by writeups?

A. For example, your interest on excess capacity is a write-up, pure and simple.

Q. You mean that is what you call it?

A. No, sir.

Q. That is what you are defining it as now?

A. It is a writeup—

Q. I just wanted to know what you were referring to.

A. —and the inter-company fee of some $82,000 to Henry L. Doherty & Company, although that did represent an expenditure on the part of Colorado-Wyoming Gas Company, we have treated that as a writeup effected through the medium of an affiliated company. Those are the two principal items. Any other items would be relatively small.

Q. You just designated and called it that name for the purpose of your exhibit, called it a writeup?

A. If I didn't think they were writeups, I wouldn't call them writeups.

Q. All right.

A. Now if you will turn to the liability side we find that the capital stock account is $1,501,000 and it is conceded, that is, the facts show that the stockholders either put that money into the company through actual cash advances indirectly or by dividends which could have been paid to the stockholders from the earned surplus which was capitalized, so it is accurate to say that the stockholders do have $1,501,000 in the business in capital stock account; however, turning back to the asset side we find an item for investment in associated companies of which the record in this case will show that approximately $98,000 represents a loan to the stockholder, the Public Service Company of Colorado.

Therefore, roughly speaking—

Q. Upon which interest is annually paid by Colorado Public Service Company of Colorado?

A. Yes, I merely—I am getting down to the fact that the stockholders have invested in the net assets of this company $1,400,000, although the plant account shows $1,900,000.

Q. That is your construction of it?

A. That is absolutely the fact.

Q. I mean, that is your construction?

A. It is the construction of any accountant that knows how to read a balance sheet.

Q. Is that so? It is your conclusion?

A. It is a fact. Here it is in black and white. I don't think it is a conclusion. I don't think an analyst who takes

a balance sheet and reads it properly and correctly could draw a conclusion it was otherwise.

It is $500,000 spent on plant account, and referring back to the liability side of the balance sheet there is no place that $500,000 could have come from except through the investment of the funds that were obtained in building up a depreciation reserve. I think that that logically follows if one understands how the depreciation reserve operates.

The company had on its books $512,000 for reserve depreciation of gas plant at December 31, 1940. That indicates that the company had collected in its revenue from its customers $512,000 to cover an item that it hadn't taken in the expense accounts each year for depreciation and the revenue which came in covering depreciation was cash that was not required to meet current operating or maintenance expenses. It was sort of a reimbursement to the company for a part of its plant.

Now, if it had not expended that depreciation reserve—the funds represented by the depreciation reserve on its plant account or some other assets, of course it would be represented in cash. It couldn't have been paid out in dividends for the reason that the surplus after the deduction of the depreciation as an expense wasn't available to pay out for dividends and there would have been a tendency to have accumulated a cash balance, but instead the plant account has been financed and has had its growth partly from the reinvestment of funds which were obtained from the customers representing the accrual to depreciation for depreciation reserve. I think that concludes my answer to that question.

Redirect Examination.

By Mr. Lange:

Q. Just one question I had to ask you and then I am through on that: I notice that your reserves for depreciation are set up under the heading "Reserves." In your opinion as an accountant, is it proper to treat reserve for depreciation as a liability on the balance sheet?

A. No, it is not. The reserve for depreciation being on that side of the balance sheet is one of the reasons why

the heading for that side of the balance sheet in this system of accounts is called liabilities and other credits. The reserve for depreciation is one of the other credits that is put on that side of the balance sheet for convenience.

I think that anyone who perceives that the reserve for depreciation as being a liability would indicate clearly that he had a misconception of one of the fundamentals of accounting and that he did not know how to read a balance sheet. The reserve for depreciation measures the decline in value of the plant assets because of the factors that are operating to cause depreciation such as wear and tear and any other factors that operate to eventually send that plant to the junk heap, and from the standpoint of accounting principle, the credit reflected in the reserve for depreciation might just as well be credited to the plant account itself. It is only for convenience of retirement accounting and depreciation accounting that the reserve for depreciation is carried in a separate credit account.

If you were relying entirely on accounting principles and not seeking the convenience, it would be just as accurate to credit the provision for depreciation directly to the plant account, and I have actually seen it done under some systems of accounting; that is, under some sets of books.

Mr. Lange: I believe that is all, Mr. Examiner.

Mr. McCreery: That is all.

Mr. Lange: Now we desire to offer that Exhibit 137 at this time, Mr. Examiner.

Mr. McCreery: I object to it as immaterial and irrelevant and also that portion of it which embodies certain correspondence as hearsay, the copy of a letter which purports to be a letter of May 1, 1940 addressed to Mr. Smith from New York, attorneys by the name of White & Case.

Mr. Lange: Representing H. L. Doherty.

Mr. McCreery: Attorneys for the estate of Henry L. Doherty. I object to that as hearsay testimony and I move to strike that.

The Trial Examiner: The objection will be overruled and Exhibit 137 will be received.

(Exhibit 137, Witness Smith, received in evidence.)

Mr. Lange: We also have Exhibit 205 that carried down the operations from September 1939 through September 1940. That has never been acted on.

Mr. McCreery: I will ask one question with respect to that. This Exhibit 205, Mr. Smith, does not present the book figures but it does present the adjustments undertaken to be made? It reflects the adjustments undertaken to be made by you and Mr. Vaught in your Exhibits 199 and 202, carried on to September 1940?

The Witness: No, that is not entirely correct.

Mr. McCreery: You state, then, what the facts are.

The Witness: I think on Page 1 of Exhibit 205 there is a note that tells the story in short. It is based on book figures but with one exception, and we have made a reclassification of the rate case expenses and things designated regulatory commission expenses on the books and taken those out of expenses in 1939 and 1940 and suspended them in a deferred debit account until they are disposed of by the Commission. Outside of that, Exhibit 205 reflects exactly the book figures.

Mr. McCreery: I just wanted the record to be clear.

Mr. Lange: We offer Exhibit 205 at this time, Mr. Examiner.

Mr. McCreery: No objection to the exhibit. Of course, there is no authority in this witness to make such suspensions of any of these accounts, regulatory accounts or any accounts.

The Trial Examiner: It will be received.

(Exhibit 205, Witness Smith, received in evidence.)

Mr. Lange: Now, Mr. Examiner, on January 30, 1941, Mr. Smith testified and his written statement was read into the record on matters pertaining to original cost exhibits and other accounting matters in this proceeding. At that time cross examination was deferred to some subsequent date and the reservation was made by each of coun-

sel for the companies to cross examine at a later date if they so desired.

The Trial Examiner: Oh, that is the exhibit that Mr. Spencer referred to as a thesis.

Mr. Lange: I think so.

The Witness: A treatise.

The Trial Examiner: Treatise.

Mr. Lange: We were just bringing it to the Examiner's attention with reference to Colorado-Wyoming. Of course Mr. Spencer or Mr. Dougherty may want to do their cross examining for Colorado Interstate Gas Company and Canadian River Gas Company at some subsequent time, but I was bringing it to the Examiner's attention at this time only with reference to Colorado-Wyoming Gas Company.

Mr. Spencer: Mr. Examiner, Canadian River Gas Company and Colorado Interstate Gas Company will have some cross examination on that particular exhibit at a later time in the proceeding, however.

Mr. Lange: Well, that's what I assumed.

Mr. McCreery: As far as that exhibit is concerned, Colorado-Wyoming Gas Company will now make a suggestion to the admission of it.

Because it is purely a self-serving declaration; it is this particular witness' ideas of what the accounting may be. They may be right and they may be wrong. It is quite similar to a lawyer getting on the stand and putting in his brief in evidence as to what he considers to be the fundamental principles of law involved, which would be equally incompetent.

As far as the Colorado-Wyoming Gas Company is concerned, we object to it as incompetent, irrelevant and immaterial, and in a sense highly prejudicial because it involves the witness' conclusions on matters that, if I understand this proceeding, is not up to him to decide but up to the Commission to decide.

Mr. Lange: The witness proceeded purely on an accounting basis and so stated in reply to my questions.

The Trial Examiner: Do you recall the number of that exhibit?

Mr. Lange: It has no exhibit number but I have the volume and pages on which it appears.

Mr. McCreery: My objection would be in the form of a motion to strike rather than an objection because it does not have an exhibit number.

The Trial Examiner: The Examiner will take your motion to strike under advisement.

Mr. McCreery: And that will be ruled upon subsequent to cross examination by the other companies.

(Vol. 86, pp. 12863-12875.)

* * * * *

Commission witness SMITH was further cross-examined on the subject of "Depreciation" in connection with his "Rate of Return" computation (Commission Ex. 202, St. B-7, p. 10) as follows:

"Q. Now, Mr. Smith, do you mean to say that this depreciation figure of $374,904.19 shown at page 10, Exhibit No. 202, and a similar item in Exhibit No. 204, page 2, in the amount of $393,663.25 are other than book items entered by you pursuant to a calculation of the service life assigned to the property in Mr. Copp's Exhibit No. 200?

"A. They represent the expired service value of the plant assets.

"Q. What do you mean by the expired service value?

"A. I mean that portion of the total service value of the assets in question which have been treated as an expense in earning the revenue which the company collected—earned and collected for the year 1939 and prior thereto.

"Q. They have no relation as far as you know to the actual physical condition of the properties at that date?

* * * * *

"*The Witness:* I assume that the thing you are talking about, when you say the actual physical condition, is an engineering concept and I therefore don't know.

* * * * *

"A. It is an accounting entry based upon an engineering estimate of the service life.

"Q. Of the total service life?

"A. That is correct. I as an accountant have converted that into terms of service value and have shown the service value which has expired and related it to revenues which have been earned by the company in the past on the one hand and by a process of arithmetic determined the service value of the plant which is applicable to the revenues to be received by the company in the future.

"Q. Your work has been wholly the work of an accountant?

"A. I believe that is correct.

"Q. You have taken a total service value and evenly apportioned it throughout the entire period of service life which the engineering department tells you that property may have, is that right?

"A. Generally speaking, that is true.

"Q. Isn't that in fact what you have done here and what you undertook to do except with respect to certain special items that were discussed in your previous testimony?

"A. That is right. I have applied straight line depreciation based upon the engineers' estimate of service lives.

"Q. He has given a service life of fifty years to the main line so you applied on the main line 2 per cent a year straight through?

"A. That is correct.

"Q. And similarly with the other classifications of property you have taken the service life again and divided it accordingly? On a 40-year life you applied it under your computation at 2½ per cent?

"A. That is correct.

"Q. It is simply a mathematical and accounting procedure that you have indulged in?

"A. That word 'simply,' I don't know what you mean by that. The procedure I have used—

"Q. I will leave the word 'simply' out. You have followed a mathematical and accounting procedure in setting up this depreciation reserve from year to year?

"A. Yes, you can even say I followed an accounting procedure because the mathematics follows the accounting.

"Q. That is right. It is just one of the tools. Why, then, on page 10 of Exhibit 202 did you subtract from the

average balance of gas plant in service as adjusted by Mr. Vaught the sum of $374,904.19 in the second line?

"A. Because the item on the second line, the average balance in the reserve for depreciation represents the expired service value of the plant.

"Q. So that your item on the third line beneath average investment in gas plant doesn't refer to the physical condition of that plant at all?

"A. I don't know. It refers to the money that the company has invested in it.

"Q. Under your computation of retirement pursuant to your straight line application of the service life figure given to you by the engineering department?

"A. That is correct.

"Q. But so far as you know, that figure for the year 1939 is not relevant to what the physical condition of that property is as of that date in terms of dollars?

"A. By 'relevant' do you mean equivalent?

"Q. Has it any relation at all? That is what I mean by relevant.

"A. Well, I think that the question of whether there is relevancy is more or less of an engineering question but I can make an answer to your question in this way. If I don't know the other factor that you are referring to, if I don't know what it is, of course, I don't know whether this figure here is relevant to it or not, or whether it is equivalent. This may be more or less or equal to whatever concept you have in mind. I don't know what you have in mind.

* * * * *

"Q. The per cent condition of a property at a given time is a physical fact, is it not?

"A. I don't know.

"Q. You don't know that?

"A. I don't have any conception of what is meant by per cent condition. It has been explained to me but it is absolutely meaningless. I have heard it talked about but I still don't have any idea as to what it is.

"Q. You have heard it talked about a great deal, haven't you?

"A. Yes, sir.

"Q. And you don't know what it means?

"A. The concept is very vague in my mind.

"Q. So evidently it wasn't in your mind at all in making these entries here?

"A. No. I reflected the expired service value as an accountant.

"Q. As an accountant?

"A. Yes, sir, based upon engineering data.

"Q. And the engineering data you went on was a statement of service years of service life to the total which you apportioned at the appropriate per cent per year and from year to year made that charge on this account, bringing it up to December 31, 1939, is that true?

"A. I believe that statement is correct.

"Q. So that when you refer to average investment, you refer to it in the light of what you just stated as the procedure you followed?

"A. That is true, and from another point of view as well. We must look at the other side of the transaction. You can't come to any proper understanding of accounting without looking at the balance sheet and income entries both."

(Vol. 68, pp. 9895-9901.)

* * * * *

They must be related. So in arriving at this expired service value referred to on Line 2, Page 10, Exhibit 202, I have also used the same value, the same amount of money—put it that way—that has been charged against the revenues of the company in computing the expenses to the company of doing business and securing those revenues. That makes it a logical, coordinated, coherent picture. You see I am consistent all the way through in what I have done, so when I come down to a return of over twelve per cent I have treated your depreciation reserve consistently in the asset aspect of it—entirely consistent with what I have done with that same computation and the same line of thought and same line of logical reasoning on the expense side of it. I assumed that if the company has—by this computation has shown that it recovered this expired service value in obtaining its revenues and has once recovered that expired service value, then it has recovered it just like any other—

Q. You are now going from the field of accounting into the field of law, it seems.

A. No, sir, I am very definitely in the field of accounting, Mr. McCreery.

Q. Let me suggest this to you: Is this figure here on Line 7 what you would consider the rate base of this company?

A. I have made no computation of the rate base, Mr. McCreery.

Q. Why did you make a computation of return? The only place a computation of return is material is on a rate base and this is a rate hearing.

A. One of the furthest things from my mind was to recommend this as a rate base. I feel as though that is somebody else's job. I am presenting facts.

Q. I understand that, but I asked you why you go further than present facts. You set up a figure and figure a return on that figure, but the figure that you set up you claim it is not a rate base. I don't think it is myself, but I want to know what you thought.

A. I didn't say it was a rate base. I said that I hadn't computed a rate base.

Q. You hadn't?

A. I had not submitted this was a rate base. I just said it was somebody else's job. They may decide it is a rate base, I don't know, but I am not setting it out as such as I am setting it out exactly for what it is.

Q. When you set up the total plant account and subtract from it the total depreciation account with some other smaller items and arrive at this figure upon which you set up a return and the income of course doesn't reflect all of the deductions, you are not undertaking at all to set up an indication of what the rate base and the earnings of this company have been in 1939? What are you undertaking to do with that?

A. I am undertaking to show here what the company earned on its investment.

Q. As you figured it?

A. If I didn't think that was the investment, I wouldn't have put it down.

Q. It is the investment for property that you say is devoted to a utility service?

A. Well, that is my understanding. Of course, I am not making the determination whether it is devoted to utility service—

Q. It seems to me you certainly have been making that determination throughout these exhibits. You have retired or undertaken to retire certain properties held for future use; you have undertaken to retire properties not used or useful for utility service.

A. May I put it this way: I have made a determination through this series of exhibits—

Q. That is what we are talking about.

A. —referring to Commission's accounting and engineering staff, I have made a determination of what we considered would be gas plant in service. I just thought the word "utility" was a legal question—

Q. Well, you used it yourself so I want to know how you used it in Line 8, Utility Income.

A. That comes from the system of accounts we have used.

Q. Did you in computing this final figure which you are unwilling to say is your rate base, in figuring rate of return on it, consider the limitations of jurisdiction in the Act or was that another matter you were not concerned about?

A. I don't believe I have been concerned with any question of jurisdiction.

Q. So as to whether or not a portion of this property and a portion of its income is subject to regulation in this rate proceeding you have given no consideration to that?

A. I certainly haven't tried to make a determination of that.

Q. I say, have you given any consideration to it in any of your exhibits of the accounting department?

A. I can't recall that we have. We certainly haven't reached any conclusions as accountants in that respect.

Q. You have treated all of the property and all of the income alike, have you not, except the item—I mean, after you have adjusted it, throwing out this, that, and the other, when you finally adjusted both, you treated it as all alike, all subject to a determination as to rate of income?

A. You are just referring to this computation on Page 10?

Q. I am referring to all of the property of the company summarized in this computation on Page 10.

A. Yes, I believe that is correct. We treated it all just as one project.

Q. And you made no segregation either of the property or of income in relation to the character of use to which that property was devoted or from which the income was received such as sales for resale as distinct from direct industrial sales?

A. No, there has been no attempt to do that in these exhibits.

(Vol. 68, pp. 9902-9906.)

* * * * *

(c) *Working Capital* (Ex. 111).

J. L. WILLARD, rate and valuation engineer, on behalf of Colorado-Wyoming Company testified on working capital as follows:

"Working capital has been computed by an analysis of requirements of the company. There are five different forms in which the company requires or employs working capital. The first is a requirement to meet routine operating expenses. It was determined from the books of the company that 48 days expire from the date of first delivery to the time the average bill is received. Annual routine operating expenses were determined to be approximately $106,000, after deducting cost of purchased gas and Regulatory Expense. The ratio of 48 to 365 days was applied to this total, resulting in approximately $14,000 required for this expense. Prepayments such as: Taxes, Insurance, etc., were averaged for a 12-months' period, resulting in an amount of about $2,500. Materials and Supplies were averaged for a 12-months' period which resulted in about $8,200. The minimum cash requirement to preserve credits and to allow for emergency expense was determined to be $20,000. The original filling of gas in the lines is an expense that the company must keep invested and amounts to about $800. The total of all these items in the actually calculated amount results in a total of $45,490 which is the final addition on Statement No. 1" (of Exhibit 111).

(Vol. 25, p. 3541.)

On cross-examination, the witness was questioned and testified, as follows:

"A. I obtained first the operation and maintenance expense of the company for a period of twelve months ending September 30, 1940. This amount was $633,712.65. From that I deducted an amount of $520,333.01, which was the cost of the purchased gas. I also deducted $10,816.89 indicated as regulatory expense. Since gas used by the company—the cost of gas used by the company—was included in purchased gas expense, I had to add back an amount of $3,660.99. These deductions resulted in a total of $527,488.91, which we subtracted from the total operation and maintenance expense, and it gave a figure of $106,223.74.

* * * * *

"I calculated from the books of the company the number of days that expired for the average customer from the time gas was delivered until the time payment for that gas was received, and this resulted in an average of 48.45 days. I adopted a figure of 48 days as the average period from the time gas was first delivered until the time money was received for the gas and for which the company were to have an amount for the routine expenses; and I applied that factor of 48/365 to the routine operation of $106,223.74, which resulted in a total of $13,949 that I determined as an amount that the company must have on hand to meet routine operating expenses. The prepayments of the company were averaged for a 12-months' period, resulting in an average amount of $2,545."

(Vol. 26, pp. 3627-3628.)

The prepayments include prepaid insurance, taxes and attorney fees. These are payable in advance.

The average balance in materials and supplies as reflected on the books of the Company was taken for a 12 months' period and produced an average of $8.151.

A minimum buffer fund to preserve normal bank credits and providing for emergency use was calculated at $20,000.

(Vol. 26, p. 3628.)

"Q. Right there I wish to ask you this: In what fashion did you arrive at that determination of $20,000?

"A. That is strictly a judgment figure based on experi-

ence of the requirements of companies and I think it is a reasonable amount for this company.

"Q. Well, you say experience figures based on requirements of other companies, do you?

"A. Yes, I gained judgment from requirements of other companies.

"Q. In what manner do you relate that to the definite requirements of this company?

"A. Oh, you have to take into consideration the expenses of the company, the amount of banking service that they require and allow for an amount which must be on hand to meet emergencies which quite often come up in a project of this nature.

"Q. Have you related that to the company's actual experience?

"A. I have related my judgment to this company.

"Q. I mean this item of $20,000 as being necessary, have you related that to the company's actual experience in the past?

"A. I have used my judgment as to the amount that a company of this size and character would require as a minimum amount.

"Q. Well, what study have you given to the company's past requirements as to this additional $20,000 that you have set up here as being necessary?

"A. I don't know that the past requirements have a great deal to do with it. A company of necessity must maintain normal credits and you have to have certain funds available at all times to maintain those credits, and you also must have at all times an amount to meet emergencies coming up every day.

"I might say that this hearing is one of them. It has brought on a sizable expense to the company.

"Q. That is true, but did you in determining whether this amount were actually necessary to be included, determine what the company's actual experience has been in the past as to requiring that much cash on hand over and above the $14,000 that you have already said you would provide for?

"A. I believe the records will show that they have on hand amounts equal to what I have calculated there."

(Vol. 26, pp. 3,627-3,631.)

"Q. You didn't get to the $800 item on that page.

"A. That is right.

"Q. What is that?

"A. That is for gas in the lines. The company pays for the first filling of gas at particular pressures it considers an average, and I have calculated the amount of gas that is in the system at all times under these average pressures and applied the original purchase cost of that gas to the amount, arriving at the figure of $825."

(Vol. 26, p. 3,631.)

On pages 3632 and 3638 of Volume 26, the witness testified that the item of $825, gas in lines, had not previously been capitalized.

"Q. Referring to page 6 of Exhibit 111, being still on working capital, what is the company's practice with reference to its payroll? Does it pay salaries and other payroll expenses monthly?

"A. I haven't looked into that matter, but I presume it is semi-monthly or monthly.

"Q. Wouldn't that be a factor you would take into consideration in determining what the working capital of the company would be?

"A. I don't believe so.

* * * * *

"Q. Well, if the company's payroll is payable monthly, or if it is payable semi-monthly, would it have a direct bearing on what the company's money requirements would be in determining its working capital?

"A. I don't see why it would.

* * * * *

"Q. What is working capital primarily based on, the requirements of working capital?

"A. If you are referring to this $13,000 figure, that is a figure to meet routine operating expenses of which the company payrolls are a part; however, I don't see how any company could be expected to make a payroll in two weeks and find the money some place to make it, and make another payroll in two weeks, and find some place to make that payroll before their revenues are received from the sales of their gas.

"Q. You determined 48 days as being necessary?

• • • • •

"A. Well, the company starts delivering gas on a particular day and 48 days after that the average bill comes in. In the meantime they have to incur operating expenses to the extent of about $13,000, and I calculate that as the amount of money they should have on hand to meet such expenses.

"Q. During that thirty days they only have a 30-day payroll, isn't that right?

"A. That is right.

"Q. During the 48-day period they have one payroll?

"A. If they are on a monthly basis, that is correct, but they have to have the money to meet that payroll."

(Vol. 26, pp. 3,632-3,635.)

"During the second 48-day period there are two 30-day payroll pay days."

(Vol. 68, p. 9,845.)

The witness calculated it on an annual basis resolving it down to the monthly situation, due to the factor of 48 days to 365 days, and related that to the annual expenditures.

"Q. Well, if you would only allow them 30 days instead of 48 days you would have an item of considerably less than $13,000, wouldn't you? Or what would that be? Suppose you calculate it on a 30-day basis instead of a 48-day basis, what would you have instead of $14,000?

• • • • •

"A. I would have no reason to compute it on a 30-day basis.

"Q. Why wouldn't you?

"A. Because it takes 48 days before the money comes in, and I have considered this as a ratio to apply to the annual routine expenditures for the amount that the company needs.

"Q. And you are just as certain it would be 48 days and not 45 days as you are of the computation that you have made on this working capital?

"A. Well, the computation is an actual condition that exists on the books of the company through a period of

the last year and a half, taking in the actual billing of gas, and that is the resultant figure of the number of elapsed days, and, naturally, I used it."

(Vol. 26, pp. 3,635-3,637.)

"Q. Then when you get to the computation of working capital, referring back to page 6 of Exhibit 111 again, in connection with the number of days that would expire, you computed it on a 48-day basis?

"A. Yes, sir.

"Q. Well, now, if you just have one payroll to meet during that period, there would just be one payroll in thirty days, wouldn't there?

"A. I believe if that were the interpretation I would choose the second period and there would be two payrolls in the 48-day period.

"Q. Two payrolls?

"A. Yes, two payrolls in the second 48-day period, and this has just been leveled off.

"Q. How do you figure that there are two payrolls in the second 48-day period?

"A. Well, there are only 48 days in the first period but an elapsed period of 96 days in two periods which calls for three payroll periods.

"Q. In an elapsed period of 96 days?

"A. Yes. There would be three payroll periods in 96 days.

"Q. Well, but you have computed your basis of working capital on the item as indicated on page 6 of Exhibit 111 where you say that it was determined from the books of the company that 48 days expire from the date of first delivery to the time of the average bill which is received. When you took into consideration the company's requirements of money during that period, did you base it on the assumption that the payrolls were met semi-monthly or monthly?

"A. I based it on the assumption that their payrolls would have to be on an average period throughout the twelve months period of the year.

"Q. On an average period?

"A. That is right, an average period of 48 days is what I assumed here—not assumed, I calculated here as the amount required to meet the routine operating expenses,

and if a person would try to assume that the first 48-day period required only one payroll it would be equally true that the second 48-day period would require two payroll periods; so the logical thing is to level it off on a per-day basis throughout the year, and so I have taken 48 days."

(Vol. 26, pp. 3,639-3,640.)

* * * * *

Q. You have on Statement 1, Exhibit 111, an item of Working Capital. It is $45,490.

A. Yes, sir.

Q. Will you explain how you computed that item?

A. I obtained first the operation and maintenance expense of the company for a period of twelve months ending September 30, 1940. This amount was $633,712.65. From that I deducted an amount of $520,333.01, which was the cost of the purchased gas. I also deducted $10,816.89 indicated as regulatory expense. Since gas used by the company—the cost of gas used by the company—was included in purchased gas expense, I had to add back an amount of $3,660.99. These deductions resulted in a total of $527,488.91, which we subtracted from the total operation and maintenance expense, and it gave a figure of $106,223.74. I—

Q. All right.

The Trial Examiner: Had you finished your answer, Mr. Willard?

The Witness: No, sir.

I calculated from the books of the company the number of days that expired for the average customer from the time gas was delivered until the time payment for that gas was received, and this resulted in an average of 48.45 days. I adopted a figure of 48 days as the average period from the time gas was first delivered until the time money was received for that gas and for which the company were to have an amount for the routine expenses; and I applied that factor of 48/365 to the routine operation of $106,223.74, which resulted in a total of $13,949 that I determined as an amount that the company must have on hand to meet routine operating expenses.

The pre-payments of the company were averaged for a

12-months' period, resulting in an average amount of $2,545.

By Mr. Lange:

Q. Right there, what do these prepayments include?

A. Those prepayments include prepaid insurance, taxes and legal fees.

Q. When are they payable?

A. They are payable in advance. Payment is made periodically by the company in advance for these three items, and the monthly balances from the books were used to obtain the figure.

Q. Are they payable at six-month intervals in advance?

A. I think one of them is. I don't know, but I think the legal fee is payable six months in advance.

Q. What portion of the total is that?

A. I think the legal fee is paid $2,500 in advance for a six-months' period; there are two such payments. That would result in an average, in my calculation, of about $1250. I haven't calculated that down but I think that is what it would amount to.

Q. About one-half of this amount that you have calculated?

A. Approximately.

Q. All right.

A. The average balance in materials and supplies as reflected on the books of the company was taken for a 12-months' period and produced an average of $8,151. A minimum buffer fund to preserve normal bank credits and providing for emergency use was calculated or determined to be $20,000. The gas in the lines—

Q. Right there I wish to ask you this: In what fashion did you arrive at that determination of $20,000?

A. That is strictly a judgment figure based on experience of the requirements of companies and I think it is a reasonable amount for this company.

Q. Well, you say experience figures based on requirements of other companies, do you?

A. Yes, I gained judgment from requirements of other companies.

Q. In what manner do you relate that to the definite requirements of this company?

A. Oh, you have to take into consideration the expenses

of the company, the amount of banking service that they require and allow for an amount which must be on hand to meet emergencies which quite often come up in a project of this nature.

Q. Have you related that to the company's actual experience?

A. I have related my judgment to this company.

Q. I mean this item of $20,000 as being necessary, have you related that to the company's actual experience in the past?

A. I have used my judgment as to the amount that a company of this size and character would require as a minimum amount.

Q. Well, what study have you given to the company's past requirements as to this additional $20,000 that you have set up here as being necessary?

A. I don't know that the past requirements have a great deal to do with it. A company of necessity must maintain normal credits and you have to have certain funds available at all times to maintain those credits, and you also must have at all times an amount to meet emergencies coming up every day.

I might say that this hearing is one of them. It has brought on a sizeable expense to the company.

Q. That is true, but did you in determining whether this amount were actually necessary to be included, determine what the company's actual experience has been in the past as to requiring that much cash on hand over and above the $14,000 that you have already said you would provide for?

A. I believe the records will show that they have on hand amounts equal to what I have calculated there.

Q. $20,000 plus $14,000?

A. I believe so. Of course, they can go up and down at different periods, but this is a calculation of an amount that really should be a normal balance and allowable in a proceeding of this nature.

Q. Well, but do you relate it definitely to the company's past experience as being actually necessary?

A. I relate it to an amount that I feel is necessary for the operation of this company.

Q. Without relating it to the company's actual experience in the past?

A. I didn't take that into consideration.

Q. All right. You didn't get to the $800 item on that page.

A. That is right.

Q. What is that?

A. That is for gas in the lines. The company pays for the first filling of gas at particular pressures it considers an average, and I have calculated the amount of gas that is in the system at all times under these average pressures and applied the original purchase cost of that gas to the amount, arriving at the figure of $825.

Q. Well, you have examined the company's books and records, haven't you?

A. Yes, sir.

Q. In connection with this exhibit?

A. Yes.

Q. Isn't it a fact that that item of gas in the lines has already been capitalized by the company?

A. I don't know that it has.

Q. You don't know that it has?

A. No, sir, I don't know that.

Q. Would you say it has not?

A. I don't believe it has. I would have to check on that.

Q. But you assumed in reporting it in this statement on Page 6 that that would be an amount that would have to be included in working capital?

A. Yes, that is an amount of money they have invested at all times.

Q. But if it has been capitalized you wouldn't put it in there, would you?

A. I don't think it is properly includable if it has been capitalized.

Q. Referring to Page 6 of Exhibit 111, being still on working capital, what is the company's practice with reference to its payrolls? Does it pay salaries and other payroll expenses monthly?

A. I haven't looked into that matter, but I presume it is semi-monthly or monthly.

Q. Wouldn't that be a factor you would take into consideration in determining what the working capital of the company would be?

A. I don't believe so.

Q. What is the company's payroll?

A. I don't know.

Q. You didn't take that into consideration?

A. It is a part of this $106,000, but whether that is the actual—what the payroll is, I don't know.

Q. Well, if the company's payroll is payable monthly, or if it is payable semi-monthly, would it have a direct bearing on what the company's money requirements would be in determining its working capital?

A. I don't see why it would.

Q. It would not?

A. No.

Q. What is working capital primarily based on, the requirements of working capital?

A. If you are referring to this $13,000 figure, that is a figure to meet routine operating expenses of which the company payrolls are a part; however, I don't see how any company could be expected to make a payroll in two weeks and find the money some place to make it, and make another payroll in two weeks, and find some place to make that payroll before their revenues are received from the sales of their gas.

Q. You determined 48 days as being necessary?

A. That is correct.

Q. When the company begins its operation at certain periods, it begins its billing, doesn't it, for gas sold?

A. That is right.

Q. When does it do that?

A. The billing, as a general rule, is a monthly billing.

Q. All right. A monthly billing?

A. That is right.

Q. And then after thirty days these items that are billed begin *comming* in?

A. No.

Q. When do they begin coming in?

A. On an average of 48 days.

Q. An average of 48 days?

A. All of the time of which the employes are working and will have to be paid—they will have to be paid sometime in the interval.

Q. All right. That is your first billing period, isn't it? I mean, those are your primary operations? What happens after that first month has passed?

A. Well, the company starts delivering gas on a par-

ticular day and 48 days after that the average bill comes in. In the meantime they have to incur operating expenses to the extent of about $13,000, and I calculate that as the amount of money they should have on hand to meet such expenses.

Q. During that thirty days they only have a 30-day payroll, isn't that right?

A. That is right.

Q. During the 48-day period they have one payroll?

A. If they are on a monthly basis, that is correct, but they have to have the money to meet that payroll.

Q. But it is only one 30-day payroll within the 48 days that you have given them allowance for?

A. Well, I calculated it on the basis of—an annual basis resolving it down to the monthly situation, due to the factor of 48 days to 365 days, and relating that to the annual expenditures. I could take the average monthly expenditures and calculate the same amount on a monthly basis?

Q. Well, if you would only allow them 30 days instead of 48 days you would have an item of considerably less than $13,000, wouldn't you? or what would that be? Suppose you calculate it on a 30-day basis instead of a 48-day basis, what would you have instead of $14,000?

A. I wouldn't calculate it that way. The money doesn't come in like that.

Mr. McCreery: I object to the question. It is wholly irrelevant and it is not responsive to the inquiry. If he questions the 48-day period, that is something again, but based on the fact that this witness has testified it is 48 days until the money comes in, if he doesn't question that fact, the rest of it is irrelevant and immaterial.

Mr. Lange: This witness has testified that in his opinion it takes 48 days for the company to get its money in.

Mr. McCreery: He didn't say "in his opinion."

Mr. Lange: That 48 days expired from the first date of delivery.

Mr. McCreery: He said it was not his opinion but a computation from the returns of the average time that the average money came in. It is no opinion at all, it is a computation matter.

Mr. Lange: It is a computation prepared by him and under his views of the matter. It applies to his opinion in the matter.

Mr. McCreery: I don't know what his opinion has to do with that.

The Trial Examiner: What is your question, Mr. Lange?

Mr. Lange: I want to know what the amount would be instead of $14,000 if he had computed it on a 30-day basis.

The Witness: I would have no reason to compute it on a 30-day basis.

By Mr. Lange:

Q. Why woudn't you?

A. Because it takes 48 days before the money comes in, and I have considered this as a ratio to apply to the annual routine expenditures for the amount that the company needs.

Q. And you are just as certain it would be 48 days and not 45 days as you are of the computation that you have made on this working capital?

A. Well, the computation is an actual condition that exists on the books of the company through a period of the last year and a half, taking in the actual billing of the gas, and that is the resultant figure of the number of elapsed days, and, naturally, I used it.

Q. And the number of elapsed days are actually 48 days and no other?

A. Well, I believe I said that I could calculate it—that I calculated it as 48.45 and used 48.

The Trial Examiner: We will stand in recess until 2:00 o'clock this afternoon.

(Whereupon, at 12:30 o'clock, p. m., a recess was taken until 2:00 o'clock, p. m., of the same day.)

Afternoon Session, 2:00 P. M.

The Trial Examiner: The hearing will come to order.

Whereupon, J. L. WILLARD, the witness on the stand at the time of recess, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination (Continued).

The Witness: Mr. Lange—

Mr. Lange: Yes.

The Witness: This morning you asked me in regard to the gas in the lines being capitalized on the books of the company.

Mr. Lange: Yes.

The Witness: I haven't had time to go through the books, but I have been advised by the officers of the company and the chief accounting officer that the gas in the lines has not been capitalized on the books of the company.

By Mr. Lange:

Q. Have not been capitalized?
A. Yes, sir.
Q. And who informed you of that?
A. Mr. Davis and Mr. Hurdle.
Q. Mr. Davis and Mr. Hurdle?
A. Yes.
Q. All right, now, did you also ascertain whether the company's payroll is taken care of monthly or semi-monthly?
A. Just in conversation I was advised it was a monthly payroll.
Q. A monthly payroll?
A. Yes.
Q. Then when you get to the computation of working capital, referring back to Page 6 of Exhibit 111 again, in connection with the number of days that would expire, you computed it on a 48-day basis?
A. Yes, sir.
Q. Well, now, if you just have one payroll to meet during that period, there would just be one payroll in thirty days, wouldn't there?
A. I believe if that were the interpretation I would choose the second period and there would be two payrolls in the 48-day period.
Q. Two payrolls?

A. Yes, two payrolls in the second 48-day period, and this has just been leveled off.

Q. How do you figure that there are two payrolls in the second 48-day period?

A. Well, there are only 48 days in the first period but an elapsed period of 96 days in two periods which calls for three payroll periods.

Q. In an elapsed period of 96 days?

A. Yes. There would be three payroll periods in 96 days.

Q. Well, but you have computed your basis of working capital on the item as indicated on Page 6 of Exhibit 111 where you say that it was determined from the books of the company that 48 days expire from the date of first delivery to the time of the average bill which is received. When you took into consideration the company's requirements of money during that period, did you base it on the assumption that the payrolls were met semi-monthly or monthly?

A. I based it on the assumption that their payrolls would have to be on an average period throughout the twelve months period of the year.

Q. On an average period?

A. That is right, an average period of 48 days is what I assumed here—not assumed. I calculated here as the amount required to meet the routine operating expenses, and if a person would try to assume that the first 48-day period required only one payroll it would be equally true that the second 48-day period would require two payroll periods; so the logical thing is to level it off on a per-day basis throughout the year, and so I have taken 48 days.

Q. Well, then, in this statement on Page 6, you don't confine yourself, then, to the first 48-day period?

A. I confine it, you might say, to the average 48-day period of the year.

Q. Oh, the verage 48-day period of the year?

A. Yes, sir.

Q. And didn't take into consideration whether—strike that—and assumed that the payroll would be met monthly, every thirty days?

A. That's right. That wouldn't make any difference whether it was met monthly, weekly or semi-monthly.

Q. Well, it would make some difference if you just confined yourself to this first 48-day period.

A. I said before that I had averaged these routine operating expenditures over a day basis throughout the entire year and taken forty-eight days of that entire expense as the requirement.

Q. But that is not what you say on Page 6 of this exhibit.

Mr. McCreery: Let the statement of the exhibit speak for itself. It is there.

The Trial Examiner: What portion do you have reference to, Mr. Lange?

Mr. Lange: This: "It was determined from the books of the company that 48 days expire from the date of first delivery to the time the average bill is received."

If that is the basis upon which he computed this working capital, I just want to be sure about that.

The Witness: That was computed to get the number of days of routine operating expenditures that the company should have as a part of working capital. It doesn't say that I based the calculation on the first 48 days of operation.

By Mr. Lange:

Q. All right, now, you, in arriving at this 106,000-dollar figure appearing on that page 6, gave that breakdown this morning. Now, isn't it true that in connection with the resulting figure of $14,000, that there is already included in that item of legal expenses, taxes, insurance, injuries and damages, as set forth in Mr. Davis' Exhibit 105?

A. Yes, they are included.

Q. Well, then, if you come along later and set up these items that go into the prepayment total, taxes, insurance, you said the "e-t-c." included legal fees resulting in an amount of about $2,500, you have a duplication.

A. That duplication would be so trivial that it doesn't enter into the calculation to any extent.

Q. It doesn't enter into it to any extent?

A. No. It would only be a very small portion.

Q. But it is a duplication?

A. Yes, it is included there.

Q. And that also applies as to taxes?

A. What taxes?

Q. Well, you have got taxes, insurance, and so forth, and you have it under the prepaid items as well as in the total that is embraced in general expenses and taxes in there, too.

A. I don't know. Those taxes, insurance and legal expenses are prepaid, I believe, but I would have to check to see if they are a part of that 106,000-dollar figure.

Q. I see. Now, these items of taxes, general, as they appear in Exhibit 105 of Mr. Davis, and included in your computation, when are those taxes paid; that is, that portion of the item that refers to advalorem taxes, exclusive of Colorado State Income Tax?

A. I didn't go into that.

Q. You didn't go into that as to the time or times when those advalorem taxes were in fact paid?

A. No, I did not.

Q. Wouldn't that have a bearing on the computation of your required working capital?

A. I don't think it would change it in any way.

Q. It would not?

A. No.

Q. Well, if they weren't paid until the following year?

A. It is a current expense that goes on each and every year that funds must be available for.

Q. And you made no investigation with reference to when they were actually paid?

A. No, sir.

Q. As to what period of time after they became due and were payable they were in fact paid?

A. No, I didn't ascertain that.

Q. Now, I notice that you did not include Federal income tax in apportioning this requirement of working capital.

A. No, sir.

Q. Why?

A. Federal income tax is based on the previous year's revenue which has already been received.

Q. In other words, then, the item of advalorem taxes

that would probably be paid in the following year are on a different plane?

A. Advalorem taxes are not based on any particular earnings of the company, any money that they actually received and continue on year in and year out.

Q. Oh, you treat them in a different fashion, then, than Federal income tax?

A. Yes, sir.

Q. In your working capital computation?

A. Yes, sir.

(Vol. 26, pp. 3626-3645.)

* * * * * *

Commission Exhibit No. 203 (Appendix this Record).

Commission Exhibit 203.

KENNETH L. SMITH, Examiner of Accounts for the Commission, testified on the subject of working capital.

Witness presented Exhibit 203, entitled "Colorado-Wyoming Gas Company, Working Capital," which in his statement attached thereto is described as follows:

"This study was made for the purpose of determining the working capital requirements of Colorado-Wyoming Gas Company and is based upon its operating figures for the year 1939 because they are believed to be indicative of present conditions. It consists of two schedules:

'Schedule No. 1, in which is developed a working capital requirement of $16,234.59, allocable to the company's transmission and distribution operations, and

"Schedule No. 2, which is a computation of the number of days lag between the time of delivery of gas and service and the date when payment for the gas and service is due.

"Schedule No. 2 helps support the conclusion stated in Schedule No. 1, which is that revenue from gas and services is, on the average, due before the cost of distributing gas and

furnishing service is paid for by the Colorado-Wyoming Gas Company."

(Vol. 68, p. 9823.)

"The allowance for material and supplies was allocated by function principally on the basis of the company's classification of material and supplies. That is, items relating to compressing station were allocated to working capital requirement for compressing system, meter stocks to the requirement for distribution system, and so forth.

"The allowance for operating expenses was allocated by function in the proportion that the total amount of each functional expense, as adjusted, bore to total operating expenses as adjusted."

(Vol. 69 pp. 9823-9824.)

Q. Mr. Smith, turning to the title page of the exhibit I note that it bears the approval of Mr. Harold Tomlin, Examiner in charge of regional office, and W. E. Baker, Chief Accountant. The two men whose names appear there under the approval are presently connected with the Federal Power Commission in the capacity therein stated?

A. They are.

Q. Do you have any other statement to make in connection with that exhibit or any further explanation of it?

A. I might state that the principles which have been employed in this working capital study are the same in general that were employed in the working capital studies for the Canadian River Gas Company and Colorado Interstate Gas Company, respectively.

Q. In this proceeding?

A. Yes, which I have previously testified concerning in considerable detail.

(Vol. 68, pp. 9823-9824.)

On cross-examination, the witness testified as follows:

Q. Mr. Smith, referring to the document identified as Exhibit No. 203, entitled "Working Capital," does working capital consist of that amount of money, materials and supplies which a going enterprise must have immediately available constantly to enable it to carry on its operations and pay its current liabilities as they arise?

A. You are speaking of something over and above its plant account entirely?

Q. Aside from the plant account.

A. I think another way of putting what you said—I will put it my way and see if you agree with it. It is all the capital an enterprise would need to carry on its operations over and above its plant account.

Q. And that amount of capital must be available for such needs as and when they arise?

A. You might have a different idea on that than I do. I don't believe that a concern is entitled to carry a huge cash reserve just because it thinks it might need it some time, or necessarily be allowed that in this kind of study because it can point out some demand. My conception of working capital in a study of this kind is an average consideration because of the fact that a company of this kind has a certain amount of flexibility in its handling not only of working capital but of all of its capital. I believe that the proper requirement is an average requirement.

Q. You believe it is an average requirement, or do you not believe that it should cover contingencies of any kind other than the regular direct day-to-day operating cost?

A. What do you have in mind by "contingencies"?

Q. You answer the question and if you want to describe what you mean by contingencies in answering, I will be pleased to have you do so.

A. There should be a reasonable cushion over and above the absolute demands of day-to-day expenses as far as cash requirement is concerned. I wouldn't want to branch out too far on the item of contingency, because I think that the company's experience which I have limited this study to is the best indication of their requirement as of any present time. If those conditions change, then, of course, naturally the working capital requirement might change.

Q. In your study with respect to Colorado-Wyoming Gas Company and in your aditional studies with respect to Colorado Interstate Gas Company and Canadian River Gas Company, you treated from a formula point of view the situation in practically the identical manner, did you not?

A. Yes, generally speaking, that is true.

Q. So whatever cushion, as you state, ought to be pres-

ent, you have adopted precisely the same formula in applying that cushion in the case of each of these three companies?

A. I believe so. The study I made of the requirements of the three companies seemed to indicate to me that their requirements could be met by the application of the same formula.

Q. Have you spent considerable time in working out this formula, Mr. Smith?

A. Yes, I really have. I have given working capital more thought than probably any other phase of this investigation, especially in relation to its size, a relatively unimportant item, but perhaps it is one of the trickiest things in accounting.

Q. I apprehended that is true. In arriving at this formula solution of it you have developed a formula which you think is applicable to the companies generally and have here such a formula?

A. I believe that the general principles of this formula can be fitted to any utility company. I haven't thought about my formula in relation to industrial companies that carry huge inventories of finished goods. That is a different problem.

Q. That is limited to what might be called electric and gas utilities without branching out too far?

A. Well, I believe that the general principles of that formula can be adapted to use in practically any utility company. It might require some modification.

Q. Now, in this particular case with respect to the three companies mentioned, you not only adopted the general principle but you have adopted the formula in detail, have you not, similarly in the case of each of the three companies?

A. Yes, my computation is a detailed computation showing the figures I employed and how I arrived at my results and my reasons.

Q. Now, Mr. Smith, in developing this formula that you have used here, to what did you give consideration—what factors?

A. Well, the computation itself shows that. Schedule 1—

Q. Well, I would like to know what factors entered into this formula.

A. Well, the first consideration there was given to ma-

terials and supplies as a working capital requirement, a stock in the warehouse with which to carry on operations.

Q. And may I suggest for the sake of brevity that in that connection you adopted substantially the average of the materials and supplies carried by this company in that part of your tabulation?

A. I did. I took the monthly balances for the year 1939—the monthend balances and struck an average.

Q. Now proceeding from materials and supplies to the cash requirements, I would like to have you give there in specific form the factors that you applied in arriving at that result.

A. We might think of the cash requirements in two segments; one, a cash requirement to pay expenses, a requirement that carries the company from the time its expenses are incurred until it receives its revenue from the sale of gas. The other factor that has to be considered is a cushion or the minimum bank balances that a company has to have to stay in the bank, and to have a margin to operate on over and above its actual cash demands or requirements for operating expenses.

Q. In this particular case the second factor was entirely eliminated by you from your resultant figure, was it not?

A. No, sir, it was not. My study shows how that was provided for.

Q. You made no provision directly for any bank balances as a cushion, directly?

A. I believe that I did. I didn't add an amount.

Q. You didn't add an amount, so you didn't directly provide for that, did you?

A. Yes, I feel that I did. At least that was my intention.

Q. Now if you will refer to your Note 7 on Page 3 of Exhibit 203, I read that language to mean that you did not provide a bank balance because you were going to indirectly provide a cushion in another manner. Now, maybe that isn't what you meant.

A. Well, if that's your interpretation, it's all right. The point I want to make is that I provided for your minimum bank requirements. Now, whether I did it directly in your language—

Q. I asked you whether it was provided for directly and I take it the answer is no. You say that you did not, but

you covered what was necessary in other ways. Is that the effect of that note?

A. Yes. My formula—it's not mine. I don't know why this formula gets hooked up with me exclusively, because it has been used by a good many other accountants, I understand—but the formula which I have used—

Q. You mean other accountants in the Federal Power Commission?

A. Yes, and others.

Q. That is where it has been developed, isn't it?

A. I don't know that it was developed in the Power Commission. I think that Mr. Charles W. Smith, now Chief of the Bureau of Accounts, Finance and Rates, used this formula before he was associated with the Federal Power Commission. I got my first ideas on it from him and have followed them since, and the same formula was discussed by me with Mr. J. P. Jackson who was formerly Assistant Chief Accountant for the Federal Power Commission and prior to that time he had been the chief accountant for the Pennsylvania Public Utilities Commission, and from my conversation with him I understand that he had used it.

Q. All right, now, you have these two factors. The first factor is the amount necessary to meet these obligations as they come in; that is the relation of incoming revenue to the payment of the bills, briefly. The second is the minimum bank balances. The second is eliminated for the reasons stated by you. Now, will you give me just how the formula is worked out on the first point?

A. Well, go back to Page 1, Schedule 1, and take the expenses which have to be met in cash, shown on Lines 4 and 5, the operation and general expenses and maintenance, and excluding all consideration of gas purchased at that point because of the fact that revenues are received before the gas is paid for, we come on Line 8 to a balance of $63,725.61, representing a yearly total for the year 1939, as adjusted, for the operating expenses of the Colorado-Wyoming Gas Company which had to be met in cash.

Q. During that year. Now, may I interpolate a question there? You also excluded all taxes from that computation, have you not, of operation and general expense?

A. That is right taxes have been excluded, too.

Q. Now go forward in your explanation.

A. Then on Line 9, the allowance for working capital is actually computed by taking one-eighth of $63,725.61 which represents approximately 45 days expenses.

Q. And then how do you arrive at the 45-day period?

A. The basis for arriving at 45 days can be best understood by referring to Page 4, Schedule No. 2.

Q. All right.

A. I take the position, of course, that 45 days in the case of this company is a liberal allowance and I think that is demonstrated by the tabulation on Page 4.

Q. All right, now, how does that demonstrate that, Mr. Smith.

A. Well, on Page 4 I have made a calculation to arrive finally at the weighted average lag in days between the date of delivery of gas or service to customers and the date when the related revenues are due, and I have shown in that table each customer; have indicated the last day of the billing period in Column 2, and the date that that customer is required by contract to pay his bill, in the following month;

Then Column 4—

Q. Now, let me just stop you a moment. Let us assume that the billing period we are talking about is January 25th, in Column 2 on Page 4 of this Exhibit 203, and on the same page in Column 3 you have given the 10th, or in one instance the 15th, as the day in February when that bill is payable under the practice—or contract between the company and its customers, is that right?

A. That is correct.

Q. A period there of fifteen days.

A. That is right, fifteen days from the last day of the billing period, in almost every instance.

Q. Now let's go to Column 4.

A. Column 4 is the lag—the number of days between the time of delivery of gas or service to customers as equated, and the date when the related revenues are due.

Q. Now, by that you take the 15th of January as what you call the equated date, do you?

A. It would be the 10th of January in most instances.

Q. It would be the 10th of January?

A. That's the middle of the period.

Q. From the 25th to the succeeding 25th would make the 10th the middle day?

A. Yes, the middle day of the billing period.

Q. So in that manner you arrive at the figure shown in the fourth column?

A. That is correct.

Q. Now, that figure applies directly and only to the gas —that applies to the payment for gas, doesn't it, to the Colorado-Wyoming by its various customers?

A. Are you speaking now of Column 4?

Q. That is the 30-day period within which the revenue should be received by Colorado-Wyoming from its various customers under your fourth column, under your lag theory of thirty days, is that right?

A. I believe so. We put it another way, I think. In almost every instance it is thirty days, with one or two exceptions. That means that it is thirty days from the average date of delivery of gas to the date that payment for that gas is due.

Q. Now, that is reflected back on Page 2 of this Exhibit 203, is it not?

A. You mean this weighted average lag?

Q. The thirty days.

A. That thirty days we come to is the average for the situation.

Q. On the basis—the basis of the computation is in detail on Page 4 and that is how you arrive at that 30-day lag shown on Page 2 in the second paragraph?

A. Yes, sir, that is a direct reference.

Q. Now, then, how do you arrive at the 40-day figure at the top of Page 2?

A. Well, that is explained in the paragraph immediately preceding, starting at the bottom of Page 1.

Q. Will you explain that in your own terms?

A. Colorado Interstate Gas Company delivers gas to Colorado-Wyoming Gas Company over a monthly billing period which begins on the 26th and ends on the 25th.

Q. As a matter of fact, they read the meters on the 25th, don't they?

A. That is correct.

Q. The billing then comes the first of the month?

A. No, that is the period of delivery from the 26th to the 25th.

Q. And the billing occurs after that period of delivery?

A. Yes. I don't know just when it is billed, but the payment is due on the 20th of the next month.

Q. So that on the gas delivered to January 25th in any year, the payment for that gas would be due on February 20th?

A. That is correct. Now that creates a lag of forty days.

Q. How do you get the lag of forty there?

A. The middle of the billing period in the illustration you used would be January 10th.

Q. And then you carry it over to the 20th of February which makes it forty days there?

A. That is correct.

Q. And that is the method in which you arrive at both of those sets of figures, thirty days and forty days?

A. That is true.

Q. Now, the next paragraph on Page 2, the number of days on the average that cash is due from gas sales or service before payment is due for gas purchases, ten days that is, if I understand you correctly, on the gas delivered by Colorado-Wyoming Gas Company to its customers for the period ending the 25th, they are billed on the first and payment is due on the 10th. Is that what this ten days means?

A. Not exactly. I think there is a better expression of it. Colorado-Wyoming Gas Company is entitled to collect it's money, we'll say, on the 10th of the month and it pays Colorado Interstate Gas Company on the 20th for the same gas; so there is a lag of ten days between the 10th and the 20th.

Q. It is the other way, instead of from the 1st to the 10th, it is from the date it is supposed to collect its money and the day it is supposed to pay for the gas.

A. That is correct.

Q. Of course, the payment for gas on the 20th of the month does not relate, of course, to other expenses?

A. No, not necessarily.

Q. Normally it does not, isn't that true?

A. Well, certainly that contract with Colorado Interstate to pay on that date would have nothing to do with the payment of other expenses—

Q. And normally, unless otherwise agreed, all bills of corporations and individuals are due on the 1st of the month, are they not?

A. You mean the first of the following month?

Q. As soon as they are billed, yes, right after the service is rendered.

A. Yes, that may be true. That may be a true statement.

Q. Isn't it a matter of practice?

A. Well, a good many services in the nature of expenses that are rendered, we'll say, in the month of January, a lot of them might be billed February 1st.

Q. Normally they would be?

A. I believe so, or there might be an arrangement for one or two per cent discount in ten days or net in thirty days.

Q. I say, barring a special arrangement, current bills are normally payable on the first of the month following the time of receipt either of services or materials and merchandise?

A. I believe that is a fair statement.

Q. Now, are those all of the factors that you used in this study in arriving at the figure of $16,234.59 total working capital requirements?

A. No, I don't believe they are all that I have considered.

Q. All right, let's get the rest of them. What other factors entered into this?

A. I would like to point out the fact that Colorado-Wyoming Gas Company has always paid its payroll once a month, so that within any period of 45 days it would only pay one payroll.

Q. Are you sure of that? If you take a particular 45 days you want to select, it would be one payroll, wouldn't it, but to take another 45-day period that I might select, you would find two payrolls in there?

A. Wait a minute. I haven't finished.

If you have collected your revenues for your first 45-day period before you meet that payroll. You see that's the difference.

Q. But you assume that the first 45-day period has only got one payroll instead of assuming, as may be the case, that there may be two payrolls. You see they alternate, and you have taken that alternate which reduces the requirements.

A. Well, we will use the month of January, then, as an illustration.

Q. It doesn't make any difference which month you use, which 45-day period, you assume for the purpose of working capital that the first 45-day period is not one in which there happens to be two payrolls, instead of the succeeding 45-day period in which there happens to be two payrolls. Now, you get a different result if you assume one or the other, do you not?

A. No, I wouldn't have got any different result because I have allowed 45 days expenses, anyhow.

Q. I see.

A. I am merely pointing out a fact here that I believe helps support my position that 45 days is a liberal allowance.

Q. That is one of the factors you took into account?

A. In saying that 45 days is a liberal allowance for expenses, that is one factor.

Q. What is the next one?

A. The next one is, there was a lag of only 30 days between the time that gas is delivered and service is rendered to the time revenues are collected.

Q. To the time revenues are collected or due?

A. To the time due.

Q. That is a different story.

A. All right, I will talk with you about the collection any time you want to.

Q. We will get to that pretty soon.

A. All right. I think that those factors together with those stated—I believe those are the principal factors in arriving at my conclusion that 45 days expenses was a liberal allowance for that purpose.

Q. Now, then, that is the basis upon which you arrived at that figure?

A. Just with respect to the results shown on Line 9.

Q. Line 9?

A. Yes. I want to discuss depreciation and taxes and bank balances separately because I have considered all those items. Shall I proceed?

Q. No, I will ask you questions.

A. All right.

Q. You have considered that item plus the material and supplies and those are the only two items that entered into your computation of the requirements of the company for working capital when you got it reduced to dollars?

A. That is correct.

Q. Now will you explain just how under your theory a minimum bank balance, a buffer fund, is dispensed with now?

A. Turn to Page 2, Note 4, and you will note—I think we can kill two birds with one stone. It shows why you don't need any working capital for taxes and this tabulation also indicates why the minimum bank balances are provided fully and adequately by the natural operations of the business.

Q. Tell me just how that is done.

A. Referring again to that tabulation, we show that the total taxes which Colorado-Wyoming Gas Company charged in its expenses for 1939, as adjusted, amount to $57,105.58. The tabulation also shows that the taxes in approximately the sum of $3,000 were paid at various times during the year 1939, whereas, in excess of $54,000 of those taxes were paid in 1940.

It is evident that the principal portion of the $54,000 consists of Federal income tax applicable to the year 1939 and as accrued on the books in 1939 and was paid in quarterly installments in 1940, on March 15, June 15, September 15, and December 15.

Now, by reason of the extended lag between the time that the Colorado-Wyoming Gas Company collected its revenue from its customers and the time that it was required to pay its taxes, there is a substantial bank balance created. It should average considerably more than $25,000.

Looking again to the $54,000 figure representing taxes accrued in 1939 and not paid until 1940, that would represent an average right there, assuming equal monthly accruals, approximately equal, or at least averaging out over the period of the year would by taking one-half of $54,000 which would be $27,000.

Of course, that cycle goes on year after year except, of course, for the first year the company was in operation when it wasn't required to pay any taxes, so we might think of a particular example. Take the revenue for the month of Jan-

uary which we will assume was collected on the 10th of February, as it is supposed to be. A certain segment of that revenue is collected from the rate payers, the customers of the company, to cover Federal income taxes, none of which is payable until a year from the following 15th of March and a portion of which is not payable until a year from the following 15th of December, so the bank balance is provided without any question.

Now, somebody might say, "Well, the money isn't in the bank; it isn't there; we don't have it." If it isn't in the bank it simply means you have invested that money in materials or supplies or in plant, and if you have done that you are clearly getting a duplication, assuming that the plant and materials and supplies all go into the rate base.

Q. Now, Mr. Smith, this, as I understand it, while it is quite a theoretic approach, is to produce a practical business effect of giving a company sufficient working capital without embarrassment in order for it to carry on its operation; that is the practical purpose of working capital, is it not?

A. Yes, sir, and that is the very purpose I had in mind.

Q. All right, let's go back for one moment to Sheet No. 1. In Line 4, "Operation and General," you have included nothing for taxes, have you?

A. Nothing for taxes.

Q. Now, you get down to Line 7 and talk about gas used in operation of the company, $4,138.65. With respect to that gas there is no revenue that ever comes in?

A. Yes, there is.

Q. No, not to pay for that gas any more than there is to pay for lubricating oil in the compressing engines.

A. The revenue received is to pay all expenses.

Q. Why don't you strike out lubricating oil from the compressor station, then, if you strike out gas? How do you distinguish between the two? They are both operating expenses.

A. That is correct.

Q. How do you distinguish between them?

A. The difference in the manner and time in which they are paid.

Q. That hasn't anything to do with your striking it out here, has it?

A. Yes, it has.

Q. I think not. It is a straight operating expense. Suppose it is paid in exactly the same way as the gas bill?

A. If your lubricating oil—if I knew you had an arrangement and didn't pay your lubricating oil until you had received your revenue of which the lubricating oil was an expense of producing, I wouldn't allow you a nickel for your lubricating oil.

Q. Suppose we used gasoline instead of gas in connection with the operation?

A. You would probably pay for it in ten days.

Q. You don't know about that, do you? You may pay cash for it, as far as you know?

A. You mean for your gasoline?

Q. This was taken out because the revenue for this was coming in. This is your statement. There is no revenue in that part of the gas.

A. I don't agree with you at all.

Q. You refer to Note 2 and state it in your notes. All I am doing is taking what you say.

A. I want to make a statement here. All that any revenue is is an amount received from customers to reimburse the company for its expenses and the cost of gas, so by that line of reasoning, which is without any flaw at all, I am sure, the gas that is used in operation enters into expenses, of course, and it is a good deal like the other purchased gas. It is all expense and the revenue comes in to cover all of the expenses of the company.

Q. That is a different proposition than saying the revenue for the gas. This gas is simply a matter of expense like lubricating oil or labor, as far as that is concerned, isn't it?

A. I could say all of your purchased gas, looking at the expenses as a whole, is like any other expense. It is an expense of operation, doing business. You couldn't do business without it.

Q. There is no question about it. It is a commodity, we will say, isn't it?

A. That is right.

Q. You treated, and do treat throughout all these exhibits, gas purchased and other expenses as separate and distinct

items. In other words, the gas sold by the Colorado-Wyoming Gas Company is collected for as gas. What is collected in addition is to cover expenses and return on the investment, but it is collected for as gas. This is not collected for by anybody as gas, is it?

A. But it is collected for—

Q. Just a moment. Please answer my question. It is not collected for as gas any more than the lubricating oil is collected for as lubricating oil?

A. I can't follow you. I don't understand your question.

Q. How about the taxes? As I understand the taxes, we are trying to build a fund that will meet the cash needs of this company from month to month. In that connection, while we are accruing—as I understand an accrued item on the books, unless it is reflected in some sum set aside for that purpose it is not working capital just to accrue an item on the book entry. We are talking about the amount of material and cash on hand which hasn't anything to do with the book entry of accruals as a practical matter.

A. Yes, but you are overlooking the fact that your revenues come in in cash.

Q. In 1939 you have the taxes to pay for 1938, while you are waiting to pay the taxes for 1939 in 1940. Of course, I know your answer to that. Give it.

A. Well, the answer to it is simply that your revenue for 1938 taxes come in in 1938. You don't pay for those taxes until 1939, that is, for most of them, and of course that thing goes on year after year.

Q. That is right.

A. But the fact still remains that you go to your rate payers and you get your money and you get it a year or a year and a half in advance before you pay those taxes. If that doesn't show up in your bank account, it means you have it in your materials and supplies or in your plant account, and it can't mean anything else.

Q. Any amount of money that isn't in working capital, in cash, materials, or plant, aside from anything that is set aside in a retirement reserve of any kind may be taken out by the company at any time? It doesn't have to be left so you don't have the money in just because you included it on the books unless the working capital provision provides for that accrual?

A. I don't agree with you at all.

Q. You don't agree with me at all?

A. No, sir.

Q. What about prepayments, Mr. Smith? the accounts that are prepaid?

A. I believe that prepayments which are substantial in amount will have to be provided for in a separate item. I think taxes can be considered as one whole proposition, that is, I just put prepaid taxes in with accrued taxes.

Q. You put both prepaid and current taxes in with the taxes that are paid a year behind? You didn't separate them?

A. Where the prepaid taxes are relatively small in relation to the total taxes I believe that is an equitable treatment. Of course, if your taxes were largely paid in advance instead of afterwards, why, then it would be a different question.

Q. Suppose the prepayment made by the company, the average for the year, would be $2500? It would amount to that average sum from year to year. Is that a sufficient sum to require notice from you?

A. You are speaking now just of taxes?

Q. No, I am speaking of prepayments of insurance and other items that companies ordinarily prepay and which this company does in fact prepay.

A. I think that possibly an average balance of $2500 per year for a little company like this one might call for some attention.

Q. What about the tax item in a little company like this where your current taxes are paid on the average in excess of $3,000? I have reference to current taxes, not taxes for the year in which they are paid. Suppose those ran $3,000?

A. They were paid mostly after the revenue started coming in to cover those taxes. I think that would be sufficient justification to include all taxes in one basket and forget it.

Q. And similarly with any amount of prepaid taxes of which there are some every year?

A. Again, if they amounted to a relatively small figure I would put them in one basket.

Q. Wherever the items are just decided against the company on these items?

A. No, I don't believe that is right. I believe in putting

them in one basket where you have a substantial lag in payment of a great portion of your taxes. It equalizes it and it is entirely equitable for the company.

Q. Do you know, Mr. Smith, what the actual lag in payment by the various customers of Colorado-Wyoming Gas Company is for the years 1939 and 1940?

A. I made some study of that. As far as making computations, I didn't reduce it to dollars and cents. From inspection of the records it didn't appear to be necessary because there is a substantial margin between the thirty days and the forty-five days.

Q. Would it make a difference in your viewpoint if it appeared that the lag in payment in the case of the period mentioned, all of 1939 and half of 1940, in the case of Cheyenne Light and Fuel Company was fifty-one days?

A. It would not make any difference, and I will tell you why. I have a very good reason for that. The Cheyenne Light & Fuel Company is a subsidiary of the Public Service Company of Colorado as is the Colorado-Wyoming Gas Company, and they have a contract to pay at a certain time, so the fact that a company which was an affiliate was being granted extra time wouldn't—I think they would have to be held.

Q. What about the Colorado Portland Cement Company? What about it if it should show a lag in excess of 48 days?

A. Is this 48 days from the time—

Q. It is under your formula.

A. My formula?

Q. Yes, sir, the same formula you are talking about. The Denver Pressed Brick Company, suppose it showed a lag of 159 days?

A. I knew the Denver Pressed Brick Company was a little bit slow.

Q. That is a $10,000 account, too.

A. I don't recall from an examination I made that the Colorado Portland Cement Company has a lag of that kind. In applying those things, have you computed a weighted average lag in days for the whole picture?

Q. As nearly as I can get it, it gives a weighted aervage in excess of 48 days.

A. I mean for all customers.

Q. Yes, for all I have here which includes about 95 per cent of them.

A. What effect did Public Service Company of Colorado have on that?

Q. The Public Service Company of Colorado appears to be 46 days.

A. Well, there again the lag is influenced by the payments from *and* affiliated company.

Q. There is the United States War Department, 48 days. You have talked about averages. Let me ask you this question: A man may have an average bank balance of $2500 throughout the year, may he not, and still at various times in the year, if the bank will permit it, be overdrawn in his account? In other words, the demands vary not only from month to month but different seasons of the year, do they not?

A. You are speaking of a man's personal bank account?

Q. Yes. I am just taking the application of averages. You have made this on the basis of averages.

A. I don't like to see personal bank accounts brought in as comparisons because they are not comparable.

Q. Take a corporation bank account, then. In other words to get a practical working operation here, even under your own formula, doesn't it look as though you have been rather severe?

A. Not after you analyze it carefully. It looks as if I have been very liberal.

Q. We have looked it over from a point of view of how bills will be paid, not a theoretical formula, and that makes some difference.

A. Did you go through and make a tabulation of how much of your money was invested in materials and supplies and plant, and count that in?

Q. The materials and supplies are set out separately, set out as a separate item there, and it is carried along at about the same rate from year to year. You have assumed all the way through here quite a number of things. The operation of a natural gas business is in many respects a hazardous business and it is known to be such, isn't that true?

A. I have heard opinions to that effect. I am not prepared to reach any conclusion.

Q. You are not prepared to controvert that statement, though?

A. I won't take a position on it.

Q. You won't take a position on it.

A. No.

Q. It would seem to me that that is a matter that should have entered into consideration, but obviously, from what you say it didn't enter into your consideration in connection with what might be extraordinary emergencies for a corporation of that type?

A. Well, I think I can answer that in this way: My computation is clearly labeled that it is based upon operation for the year 1939.

Q. That is right.

A. And I know of nothing that has happened in 1940 that would make that approach invalid. The results for 1940 might be a little different. I haven't checked it.

Q. But as I understand in this you haven't taken into account anything except the definite set operating expense account of the company; aside from anything else and beyond that you haven't anything set up in your working fund?

A. I have taken the company's experience for the year 1939 and I have reviewed their experience for the prior years without computing it in detail, which led me to the conclusion that in no year prior to 1939 would it have required a greater working capital than I computed for 1939.

Q. Under your approach?

A. That is correct. So I in effect had the benefit, you might say, of about fifteen years of the company's experience or history.

Q. And you didn't find in that period any extraordinary situations, or did you look for them?

A. I didn't find anything—

Q. As a matter of fact, you really didn't look for them, did you?

A. Except to review the working capital requirement on this approach.

Q. On the basis of your approach set forth here on Page 1 in the ordinary expense as you pared them down?

A. You say "pared them down?"

Q. Yes, from what they actually were. With the exclu-

sion of various items for whatever reasons you assigned for them, they were cut down from what they were on the books?

A. They are my adjusted expenses as in Exhibit 202.

Q. They don't tie exactly into Exhibit 202.

A. But my basic starting point was Exhibit 202.

Q. Now, then, of course, since you have taken 1939, there has been no allowance at all in your figures for regulatory commission expense?

A. No, that is correct. That is recognized.

Q. And under the Uniform System of Accounts of the Federal Power Commission, those are to be put on the books as an expense for the year in which incurred and paid. Certainly that is true in 1940, even though techincally you may say this Uniform System of Accounts didn't bind in 1939 so far as you are concerned. The Commission, as I understand it, has neither directed or permitted any change in that entry, yet you have reversed the entry and have taken it out. I want to know what authority you had to do that, because it has a bearing on the working capital you computed you say definitely on the year 1939?

A. We touched upon that point yesterday.

Q. We are touching upon it again.

A. I wanted to suspend those expenses for the consideration and disposition of the Commission.

Q. But you didn't suspend them. You took them clear out of all your accounts?

A. I put them in a balance sheet account, a suspended account.

Q. I understand that. You have taken them out of income account and have given no reflection of it in working capital. By what authority did you do that? Were you directed by the Commission to do that?

A. I don't recall that I was directed. My work has been approved by my superiors—

Q. I am just trying to find out the procedure. Was that done as far as you know on your own initiative or under someone's direction?

A. As I recall those particular things, I think I made up my mind how I thought they ought to be handled and asked the chief accountant Mr. Baker whether or not he would approve the procedure and he did approve it before

it was done. I think I wrote a letter about that item specifically to Washington last summer.

Q. That you had requested their views, however? Was that letter in response to your request?

A. I said I proposed to do certain things and asked whether or not it was approved and it was approved.

Q. I wonder if you could bring in that letter?

A. I may be able to dig it up. I don't think I have it here right now.

Q. If you will, please produce that letter.

A. All right.

The Trial Examiner: We will stand in recess for five minutes.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

The Trial Examiner: The hearing will be in order.

Mr. McCreery: Just one or two more questions at this time on this.

Q. Mr. Smith, how much of a buffer fund do you figure you have provided this company in this study on working capital evidenced by Exhibit 203?

A. I hadn't made an exact computation, but I think that reference to my schedule of tax payments there would indicate that that buffer fund is not less than $25,000, and I believe that would be a very conservative figure.

Q. You think there is a buffer fund there in the workout of this of about $25,000?

A. Not less than $25,000.

Q. Not less than that. That is on what assumption?

A. There is approximately $54,000 in 1939 taxes that won't be paid until 1940, and therefore the average accrual of taxes for the year 1939 which were not paid until 1940 would be one-half of $54,000 or about $27,000. Now, that doesn't give any consideration at all to the fact that there is still a further lag in the payment of those taxes because 1939 income taxes are paid on March 15th, June 15th, September 15th, and December 15th, 1940.

Q. That is the income tax?

A. Yes, sir.

Q. Not the property tax?

A. The property tax I believe is payable in February and August.

Q. January——

A. Or January and August,—not quite as much of a lag there.

Now, I believe that it follows that $25,000 as a buffer fund is very conservative in the light of those facts.

Q. As a matter of fact, the total tax bill for the year is somewheres from 90 to a hundred thousand dollars, isn't it —all taxes of every kind?

A. Not for the year 1939. The total bill there was about $87,000.

Q. So your idea would be to divert from the accruals for taxes, money for any other contingencies on the expectation and hope that the money would then be returned in time to pay the first accruals on taxes, is that it?

A. That is not an accurate statement of the situation because that is not what happens. There wouldn't be any diverting—

Q. I don't mean it is set aside as a trust fund, but it is accrued for that purpose according to your theory.

A. The significant fact is that the revenue is received and an accrual is made for taxes. Now, the revenue that is received—the cash, merges in with the general fund of the corporation, and it carries on its business and places those funds, presumably, where it thinks it will be the most advantageous and it operates along from month to month and meets its requirements from month to month, so there isn't any setting aside or diverting of funds at all. It simply means that where there is a significant lag in the payment of taxes as compared with the time that the revenue is received to cover those taxes, it simply means that the funds are in the company's possession and whether the company keeps the funds in the form of cash or invests it in plant or material and supplies—

Q. Of course, if it is invested in plant it goes out of any working capital and goes into plant account, doesn't it?

A. Yes, that is the very point I am making, that you have it in your plant account as a plant item, even though—

Q. Well, if you make capital additions, of course, but

your contingencies don't all involve capital additions, do they?

A. Well, I don't know just what contingencies you might be referring to.

Q. All right, now, it is significant to you at all that at almost any time that you—take a balance sheet of this company for 1939, the outstanding accounts receivable will aggregate $90,000 and that current and accrued liabilities ordinarily run from a hundred to a hundred and fifteen thousand dollars. Is that of any significance in connection with your theory and formula and study?

A. I don't believe it is in the case of this balance sheet.

Q. Now, one or two other questions at this time.

I gather from what you say that you believe that there ought to be a buffer fund, however it may be provided, but that there ought to be in this kind of an operation a buffer fund, and you believe it is provided in another way, but you do believe that there ought to be a buffer fund, do you?

A. Yes, there should be some sort of a cushion.

Q. How much of a buffer fund do you believe is required by this company in its operations from your knowledge of this company? Is the $25,000 that you speak of adequate?

A. I believe that it is.

(Vol. 68, pp. 9831-9866.)

* * * * *

Company Exhibit No. 246 (Appendix this Record).

(d) *Going Concern Value* (Ex. 246).

F. C. HAMILTON testified on "Going Concern Value," on behalf of the Company. (Vol. 84, pp. 12,447-12,515.)

Direct Examination.

Witness resides at East Orange, New Jersey; has been engaged in making valuations for various purposes for public utilities and natural gas pipelines; and has made numerous studies and valuations over a long period of time. The first natural gas pipeline upon which he, as a valuation engineer, worked was in 1918. His work has been over

the United States generally wherever there is production and transmission of natural gas. It has included portions of Canada, northern New York, Pennsylvania, West Virginia, Ohio, Kansas, Oklahoma, Missouri and Colorado; and his studies have been made for the purpose of presenting information to various state public utility commissions, courts and the Federal Power Commission, for valuation and rate-making purposes. In addition his valuation work relates to authorization of security issues, taxation cases, bond houses and insurance companies for the sale of securities or properties. It has also included many cases involving the purchase and sale of natural gas pipelines and distribution systems. From December 1, 1925, to September 30, 1935, witness was a member of the Executive Committee of Henry L. Doherty & Co. and charged with negotiations for purchase and sale of properties which Cities Service Company either was acquiring or disposing of. At all times witness was permitted to work for companies outside the Cities Service organization and has worked for numerous non-affiliated companies of which the witness named several. (Vol. 84, pp. 12,450, 12,462.)

He has valued two billion dollars worth of public utility property, including approximately five hundred million dollars of natural gas properties. He has had an organization of men engaged in this work for many years, at present consisting of about 70 men. This force has varied from 12 to 75 men during the last 23 years. (Vol. 84, p. 12,451.)

In connection with such valuations he has had occasion to consider the problem of going concern value. He testified: "Going concern value is an amount which a willing buyer will pay a willing seller for the attached business and stabilized and seasoned organization, over and above what he would pay for the bare physical property." (Vol. 84, p. 12,452). It is an item given consideration in the purchase and sale of natural gas properties. In all transactions of purchase and sale with which the witness has been connected, going concern value was always considered and valued in some manner. The *witness* "never knew of any purchase or sale in which there was not very careful consideration given to the business attached." (Vol. 84, pp. 12,452, 12,453.)

Exhibit 246 (see Appendix) identified by the witness (Vol.

84, p. 12,453), is a tabulation showing volume of gas sales and the number of customers served directly or indirectly by Colorado-Wyoming Company since its organization in 1925. The first page shows the number of customers attached directly and indirectly from 1925 to 1940; indicates that the total number of customers has grown from 4,124 in 1926 to 16,404 in 1940, an increase of 298%; and that there has been a consistent growth with the exception of the depression years 1931, 1932 and 1933. (Vol. 84, pp. 12,453-12,454.)

The second sheet of the exhibit is identical with the first, except that it concerns itself with the sale of gas by volume, during the same period from 1925 to 1940, and shows an increase from the initial sales of 5,098 M. c. f. in 1925 to 3,209,111 M. c. f. in 1940. (Vol. 84, p. 12,454.) The average customer under resale contracts has, in the period from 1926 to 1940, increased his use from 50,300 cubic feet to 113,700 cubic feet (Ex. 246); an increase of 63,400 cubic feet, or 126%.

Witness has been familiar with the operation of Colorado-Wyoming Company, its system, the method under which it has been run, and the financial returns of the Company since its origin, through his work on the Executive Committee of Henry L. Doherty & Co. (Vol. 84, p. 12,455.) He is very familiar with the entire construction of the Company's system, including both the original Fort Collins-Cheyenne System (Vol. 84, p. 12,456), served by the Wellington Field, and the enlarged system created by the building of the Arapahoe-Fort Collins line and branches, served by gas purchased from the Colorado Interstate Company. The checking of all requisitions for construction and annual estimated operating budgets for the ensuing year, over a long period of years, has given him a clear insight into the Company's operations and management. (Vol. 84, pp. 12,455, 12,456, 12,463, 12,464.)

On this point the witness testified:

"A. • • • Monthly those estimates were checked against the actual results and were revised or the differences explained, which gave us a background to check two things. One was to check the operating ability or the estimating accuracy of the men on the property and another one was

to give my people a chance to check their estimates of construction costs which were made in advance against what actually took place.

"Q. So that you were very closely familiar with the entire construction of this company's system, both the original system between Fort Collins and Cheyenne as served by the Wellington field and the enlarged system created by the building of the line from Fort Collins to Littleton and the purchase of gas from the Colorado Interstate Gas Company at point for service of the entire system?

"A. That is true."

(Vol. 84, p. 12,456.)

We have considered the management efficient, and the Company has, during the period of its life and in connection with the growth and volume of business and number of customers, enjoyed a favorable financial return.

He testified the property which is only making its operating expenses would have a going concern value if it had customers attached, for the reason that with customers and an adequate supply of gas an efficient management can be substituted to correct the fault that lies behind the lack in revenue. In this connection the witness stated he had had considerable experience with a natural gas pipeline system which at the time of its purchase was not even making operating expenses. The Cities Service Gas Company was originally built up out of three or four pipeline companies, all of which were in the hands of receivers. The receiverships resulted from the fact that they were built and operated by people whose experience in the natural gas business was in Pennsylvania, where the life of gas wells is very much longer than it is in gas fields in the Mid-continent area, which were supplying these various pipelines now owned by Cities Service Gas Company. These companies found themselves out of gas, and their public relations were very poor. They did have many customers attached. Cities Service Gas Company bought these properties, realizing the situation, and thereupon secured an adequate supply of gas and established better public relations. The attached customers of these bankrupt concerns constituted a real value aside from the physical properties themselves, and this intangible value was not destroyed by the annual deficit. This

intangible value the witness defined as "going concern value." (Vol. 84, pp. 12,458, 12,459.)

The witness *Hamilton* then further testified as follows:

"Q. From your knowledge, Mr. Hamilton, over a long period of years in the operations of the Colorado-Wyoming Gas Company's property and your experience which you have briefly summarized in connection with natural gas properties over a good many portions of the United States, do you have a judgment as to what a willing buyer would pay a willing seller over and above physical value of the property of this company for that intangible value which you defined as going concern value?

"A. I do, yes, sir.

"*Mr. Lange:* Physical value, what did you have in mind by that, Mr. McCreery?

"*Mr. McCreery:* I had in mind the bare bone physical value.

"Q. Is that what you understood me to mean when I asked the question, Mr. Hamilton?

"A. Yes, sir.

"Q. What in your judgment is that value in the case of this company?

"A. I think it is $175,000.

"Q. Would your opinion as to going concern value be altered by the fact that the company might have spent as much as a million dollars to create it?

"A. No. Cost and value are only synonymous by accident. An inefficient operating force could spend twice or three times as much as the business would be worth after they got it, and of course you would pay what it was worth. You might have a particularly favorable circumstance where they wouldn't have to pay as much as it was worth to establish it.

"Q. Would your opinion as to what the going concern value be altered by the fact that the company might have spent but very little to attach the business it possesses?

"A. No, it wouldn't.

"Q. In other words, that intangible value is an existing fact in your mind?

"A. That is true. Somebody may have given me my

cuff links as a present and they might not have cost me anything, but they have a value and I wouldn't let somebody else take them away from me because I didn't pay anything for them."

(Vol. 84, pp. 12,459-12,460.)

On cross-examination the witness testified:

Cross Examination.

By Mr. Lange:

Q. Mr. Hamilton, did you at the beginning of your statement state what particular professional occupation you classify yourself under?

A. I just call myself a valuation engineer. That is what I have been for a little over twenty years and I am now employed by Electric Advisers, Inc. and was previously employed by Cities Service Company, and previous to that I was employed by Henry L. Doherty & Company in that capacity.

Q. You stated that among the various assignments you had worked upon was one before the Federal Power Commission. You mean you presented some study before them at somebody else's request?

A. I presented valuation of the physical property of the Natural Gas Pipeline Company of America.

Q. In other words, you presented it at the instance of Natural Gas Pipeline Company of America before the Federal Power Commission?

A. Yes, sir.

Mr. McCreery: It wasn't suggested that he was acting for the Federal Power Commission.

Mr. Lange: I didn't get his statement very clear.

Q. How long have you been engaged in this character of work for Electric Advisers, Inc.?

A. Since their organization about—I think I can give you the exact date.

It was from January 1, 1938 when it was organized.

Q. January 1, 1938?

A. Yes, sir.

Q. In connection with this work—strike that.

Previous to that employment or engagement with Electric Advisers, Inc., did you have occasion to follow your profession of valuation engineer in rate proceedings?

A. Yes, sir, I did. I was employed from October 1, 1935 to December 31, 1937 by Cities Service Company and prior to that, from April 1, 1917 by Henry L. Doherty & Company.

In other words, my work with Electric Advisers, Inc. is just a continuation of the same work I have been doing since April 1, 1917, Electric Advisers, Inc. being formed under the approval of the S. E. C.

Q. So this particular character of work has been confined almost entirely to the various Cities Service organizations?

A. Principally, that is true, but I have done a considerable amount of work for other natural gas organizations, particularly on the outside.

Q. Did you have anything to do with or did you have any knowledge of the situation with reference to the Colorado-Wyoming Gas Company at the time of its organization?

A. Yes, sir, because all of the preliminary negotiations and setups were conducted and presented to the Executive Committee of which I was a member.

Q. Colorado-Wyoming Gas Company was formed about the year 1925?

A. Yes, sir.

Q. And at that time its facilities extended from what point to what point?

A. It extended from the Wellington field to Cheyenne.

Q. The Wellington field in Colorado and to Cheyenne, Wyoming?

A. Yes, sir. When those various properties came in they first supplied the Fort Collins district. That was in 1925, and in 1926 Cheyenne was supplied.

Q. Where was the gas supplied from?

A. From the Wellington field.

Q. From the Wellington field?

A. Yes.

Q. Did you know anything about the production of gas in that field or the ownership of the producing properties in that field?

A. No, sir, I did not, because I didn't have anything to do with the geological studies that were made.

Q. Do you know anything about that at all?

A. No, sir.

Q. What consideration did the Cities Service group give to that phase of it at that time?

A. Well, they had the advice of a very large geological department, advice that was presented to the Executive Committee as to what we might reasonably expect out of that, and it was on the beginning of decline of that field that other sources of supply began to be considered.

Q. What other sources?

A. The Colorado Interstate.

Q. The Colorado Interstate Gas Company?

A. Yes, sir.

Q. That was the source of supply being brought from the Texas Panhandle field through the Canadian River Gas Company's and Colorado Interstate Gas Company's lines?

A. To Denver, yes, sir.

Q. To Denver?

A. Yes, sir.

Q. When was that? What I mean by "when was that," was, when did your group first start considering the use of that gas for supplying your customers?

A. I can't recall when that contract was made, but I know it was a long time before the contact was made, because the negotiations for both the Denver situation and later for the building of the line to Cheyenne took a long period of time. I would have to go back to diaries to—

Q. Was it some period of time prior to that that the contract was actually executed or dated?

A. Yes, sir.

Q. What was the mileage of pipe line that your company, the Colorado-Wyoming Gas Company, had at that time, in 1925?

A. I would have to refer to the maps to get that, because I think there is 195 miles of pipe line in the system as a whole now, but I couldn't divide it up for you without reference to the maps.

Q. You just know the points of service during that time? What were they?

A. The points of service at that time were Cheyenne, beginning in 1926; Fort Collins, beginning in 1925—but that was a small sale—in 1930, Fort Logan, Greeley, Fort War-

ren—I think that—I can't give you the exact dates in those years but those are the approximate years.

Q. You are now referring to the companies that distributed and resold gas?

A. Yes, sir.

Q. What about the direct industrial sales? When were they attached?

A. The Colorado Portland Cement Company first came on in 1927, the Great Western Sugar Company in 1929, the Amerada Petroleum Company in 1936, the Denver Pressed Brick Company in 1937. I think those are all I can give you.

Mr. McCreery: The respective dates appear by reference to these charts, do they not?

The Witness: I don't believe they do.

Mr. McCreery: I mean by reference to the volume of gas. It shows when gas was first used by these various customers, does it not?

The Witness: Yes.

Mr. McCreery: The year but not the exact date.

The Witness: If you will look at your volume of gas you can find the year in which a volume first appeared against those particular companies.

Mr. Lange: I see.

Q. Now, this group of customers that is set forth on this Exhibit 246—was this document identified?

The Trial Examiner: Yes, sir.

By Mr. Lange:

Q. —indicates the total customers served by Colorado-Wyoming Gas Company. These figures were obtained from where, Mr. Hamilton?

A. They were furnished to me by my people from the records of the company.

Q. They are not on any—strike that.

The second page sets forth the Mcf. sales which are on varying contract pressure bases, aren't they?

A. At the pressure base at which it is sold.

Q. At the varying pressure bases which it is sold?

A. Yes.

Q. There is no uniform pressure base calculated?

A. No, sir, there is no uniform pressure base calculated, because if you did you couldn't check your total sales against the records without showing an apparent error.

Q. And if you don't do that you have figures as you have set them up on Page 2 just like you would have in adding apples and potatoes?

A. Not quite, because there isn't such a variation between those pressure bases. It was shown in there to indicate principally the increase, customer by customer, of the sales, and of course each individual customer is a continuing pressure base.

Q. Going back to Page 1 of this Exhibit 246, the first sheet, there I see you have a group—rather, you have about 17 different places of sales on the system, is that correct? You don't have the number there, but adding them up I find you have a line following through your distribution companies for resale, public authorities, miscellaneous main line, industrial, and total of all customers there, 17 lines.

A. Yes, but the difference—

Q. You don't have them numbered?

A. No. The different places of sale would be 20, because these industrial customers are each at a different location. There are nine of them down there. Instead of counting it as one it should be counted as nine.

Q. What I want to get at first is, at how many points does Colorado-Wyoming Gas Company sell gas from its line?

A. You mean sell or deliver?

Q. Sell or deliver.

Mr. McCreery: What year?

Mr. Lange: Well, say 1940.

The Witness: Your sale points and delivery points could vary and quite often they do because—take a town like Fort Collins, for instance, where you might make delivery at two or three points on their system. Whether they do or not, I couldn't tell you that and therefore couldn't answer the question because I am not familiar enough with the detailed mapping around those towns, but as general practice I do know—I think at Kansas City we have about four delivery points in the town and some in other places.

By Mr. Lange:

Q. But your company—or, rather, Colorado-Wyoming Gas Company, as set forth on Page 1, Exhibit 246, lists names of purchasers of gas from them, doesn't it?

A. Yes, sir.

Q. You first have the Cheyenne Light, Fuel and Power Company?

A. Yes, sir.

Q. Then you have five companies under Public Service Company of Colorado.

A. Yes, sir.

Q. Five particular sale and delivery points.

A. Yes, sir.

Q. To the Public Service Company of Colorado?

Mr. McCreery: Wait a minute. That isn't what it says. It says "five districts."

Mr. Lange: All right, we will read it just the way it is.

Q. The Public Service Company of Colorado is the purchasing company?

A. Yes, sir.

Q. And the deliveries to Public Service Company of Colorado are made at Fort Collins, Berthoud district, Boulder district, Brighton and Fort Lupton districts and the Denver fringe district?

A. Yes, sir.

Q. Then you make a sale to the Greeley Gas & Fuel Company?

A. Yes, sir.

Q. And you make one to the Highway Gas Company?

A. Yes, sir.

Q. And then under the group of public authorities you make sales at Fort Logan, Fort Warren, Denver Board of Water Commissioners, and the Federal Correctional Institution?

A. Yes, sir.

Q. Then you have what you term miscellaneous main line sales. There are none in 1940 as I understand it.

Mr. McCreery: Those are the right of way customers.

The Witness: None of those.

By Mr. Lange:

Q. You have nine industrial customers you served in 1940?

A. Yes, sir.

Mr. McCreery: They are listed on another page.

The Witness: You can find them under individual names on the second page.

By Mr. Lange:

Q. The way I figure that you have 17 customers, is that right? The Colorado-Wyoming Gas Company had 17 customers in 1940?

A. That is true, because of the grouping of the five districts under Colorado Public Service Company.

Q. And those 17 customers purchased all of the gas that Colorado-Wyoming Gas Company sold in 1940?

A. Yes, sir.

Q. And of those 17 customers, Public Service Company of Colorado was the largest resale customer, wasn't it? When I used the words "resale customers," I meant purchaser in terms of gas for resale.

A. Yes, sir, that is true.

Q. And the next largest resale customer or purchaser is the Cheyenne Light, Fuel & Power Company?

A. Yes, sir, they purchased about half as much as the Public Service Company of Colorado.

Q. And both the Public Service Company of Colorado and Cheyenne Light, Fuel & Power Company are affiliates of the Colorado-Wyoming Gas Company?

A. Yes, sir.

Q. What is the nature of that affiliation?

A. The Public Service Company of Colorado owns the Colorado-Wyoming Gas Company.

Mr. McCreery: Also the Cheyenne Light, Fuel & Power Company?

The Witness: Yes.

By Mr. Lange:

Q. And the Cheyenne Light, Fuel & Power Company distributes gas in Cheyenne, Wyoming?

A. Yes, sir.

Q. On your first page of Exhibit 246 you have total of all customers in 1940, 16,678.

A. Yes, sir.

Q. And it varies in numbers back through 1925?

A. Yes, sir.

Q. And also through the years 1925-1940. Do you indicate definitely when each of those were attached?

A. Not the exact dates but the years in which we first made sales.

Q. You do indicate when each of the 17 customers were attached?

A. Yes, and that is true also about the first year in which the customers appear on the first sheet.

Q. Now, then, going back to your main subject, I believe you stated that your version of going concern value was what a willing purchaser would pay to a willing seller, did you not?

A. For attached business, yes.

Q. For attached business?

A. Yes, sir.

Q. Is that what they pay or is that the basis of their consideration when they negotiate for the purchase of a plant?

A. That is not the only basis. That is only one of the considerations. Of course, they give a very detailed study to the physical property itself and the condition of its maintenance and all other items of that kind.

Q. In your particular definition of that concept it has been defined various ways, hasn't it?

A. It has been defined in many ways. I have just given what is usually accepted in transactions for the purchase and sale of property.

Q. What do you mean by "what is usually accepted"?

A. What I can get the insurance companies to allow me to include if I am trying to borrow some money on a bond issue or what I could get anybody to pay that was going to buy the property, or what I am willing to pay or the payment I would recommend if we were going to buy the property.

Q. All right. That particular version of it hasn't been the one that is spread over the law books with reference to rate cases, has it?

A. It has been put into many rate cases, yes, sir.

Q. But in what particular proceedings do you have that concept in mind? Have you any particular one in mind?

A. Yes, in the Cities Service gas case.

Q. Which one?

A. I will have to ask Mr. McCreery to give you that citation. I was in it off and on for five years.

Q. You mean the Kansas proceedings?

A. Yes, before the three-judge Federal court.

Mr. McCreery: It was in 1933 and 1934.

By Mr. Lange:

Q. Did you testify in the Wichita case?

A. Yes, I did.

Q. Did you have occasion to give any consideration to what others had thought of that concept during the course of your professional work?

A. Yes, I have. I have seen people trying to figure it out on the basis of cost in many other ways, going clear back to the old Gordon Metcalf concept concerning going value. I watched it with some amusement, it being the more inefficient you were the more it cost and the more it was worth, but I didn't agree with the theory.

Q. Did you agree with what they did in Galveston in the Galveston Electric case?

A. No, I didn't agree with a lot of things.

Q. What theory—strike that—do you know Mr. P. McDonald Biddison?

A. I do.

Q. Do you agree with his concept?

A. I don't know that I have ever heard Mr. Biddison put on going concern value. In the only cases I was associated with him he was testifying as to the value and condition of compressor stations, largely.

Q. You have never heard him give his version of what he considers going concern value to be?

A. Not that I know of, no, sir.

Q. Hasn't he done considerable work for the Cities Service group?

A. He has, but the only work I know of he has done for us was compressor station work on the physical property.

Q. You only had occasion to see what his method was with reference to reproduction costs new?

A. No, he was asked to determine the per cent condition.

Q. That was a part of the reproduction costs new appraisals?

A. It was a deduction from the reproduction costs new.

Q. He just determined the per cent condition and had nothing to do with the reproduction costs new appraisal?

A. No, sir, because I had done that myself.

Q. Did he testify in any proceeding involving reproduction costs new?

A. Yes, sir, he was in the Cities Service case in 1934.

Q. Didn't he in the case of his testimony confirm your findings on reproduction costs new?

A. Not that I know of. I don't think he had anything to do with that.

Q. He didn't say that he had examined it and approved the method followed?

A. He had examined the property for the purpose of determining the per cent condition only.

Q. And in connection with that, presented the going concern value?

A. I did.

Q. You did?

A. Yes, sir.

Q. What version did you have of it at that time, the same as this?

A. I had the same version I now have, but in that particular proceeding, having been familiar with the way the money was expended to attach the business, I went into the cost of it as well.

Q. You did?

A. Yes.

Q. You still say you don't know on what theory Mr. P. McDonald Biddison computed his going concern value estimates in any of the Cities Service cases that he has testified in?

A. I don't think—as far as I know, he hasn't testified to that in any of the Cities Service cases.

Q. He has not?

A. Not unless it was the Arkansas Natural Gas case.

Q. What position did he take in that?

A. I don't know. I wasn't in the Texarkana case.

Q. You have never seen his study on going concern value?

A. No, sir.

Q. He has done considerable work for the Cities Service groups, hasn't he?

A. He has and as I say, the principal part of it was the type of work I have just described to you, the determination of per cent condition.

Q. You said that anybody that considers that basis—or, rather, that basis of going concern value out-of-pocket costs in the early days was following the wrong course?

A. He might be right.

Q. He might be right?

A. He might be right if it just so happened that he could, in addition, prove those expenditures had been very efficiently made and that the value was as much as the cost or was related to the cost, but as I say, cost and value are only synonymous by accident.

Q. Supposing he says he utterly disregarded whatever the company may have spent in the early days for these so-called intangibles but that if the company were reconstructed now it would in fact have to be spent. What about that version?

A. If he can determine what they have to spend to reproduce it, I think it would be a pretty costly estimate. A good estimate of the physical property—

Q. He would go back to the estimating method of determining what the out-of-pocket cost probably might have been or would be at the present time?

A. Yes. In the Cities Service estimate there is plenty of 16- and 18-inch pipe for which the original payment was $86 a ton. We can buy it for less now and if I used it I would use the reproduction cost rather than the original cost.

Q. If price levels were high you would use what system?

A. As of the time if they were high or low, I would use those price levels of that time.

Q. If your price levels were high, what would you use with reference to determining the cost of the plant?

A. I would use the levels in effect as of the time I was making the determination.

Q. At the time you were making the determination?

A. Yes, oh, yes.

Q. If they were low you would pursue the same method?
A. I would pursue the same method always.

Mr. McCreery: That is, in a reproduction costs new study.

By Mr. Lange:

Q. In your entire experience as a valuation engineer, of course this concept of going concern value has fitted right into the reproduction costs new?
A. Yes, sir.
Q. Very definitely?
A. Yes, sir.
Q. Did you ever know of it having been used in connection with the original cost of the property?
A. Yes, that is what the Wisconsin Commission tried to do until the United States Supreme Court threw it out.
Q. What did it do with reference to the determination of going concern value to determine past deficits?
A. They threw it out.
Q. They threw it out?
A. Yes, very, and very properly so, I think.
If I had been foolish and spent a lot of money for something—
Q. So that if a company has had past deficits, that can't be used as a measure?
A. No.
Q. But it would still have going concern value?
A. It would if it had the customers attached and the opportunity to make sales and had an organization that knew how to go at it and do it.
Q. Although from its inception up to the time of this computation it would show a series of deficits?
A. Perfectly true. When all of the major companies went into the Cities Service Company they were in the hands of receivers.
Q. That going concern value would in your opinion have an added value, as you put it?
A. It would have a value, yes, because we didn't have to go looking for the customers, as we had the customers. All we had to look for was some gas.
Q. Under your version as you use the word "value" in going concern value, that is there regardless of cost?

A. Not regardless of cost, but because I know I can't create it without making expenditures, but not identical with cost.

Q. You say that expenditures are necessary to create it?

A. Most assuredly.

Q. You were just comparing it with the cuff links that you say were given to you, that they were of no expense to you whatsoever and therefore had no relation to cost?

A. Certainly, and when I come to determine the value of the cuff links I would go to a store and find what the duplicates to them would cost.

Q. But they didn't cost you anything.

A. But they are not going to take them away from me for nothing.

Q. You would go down and find out what they would cost?

A. That is what I would do.

Q. And this would give you the cost? This jeweler to whom you went would give you his opinion as to what those cuff links would cost?

A. If he were honest, yes.

Q. We are presuming that he would be honest.

Q. Can you tell me who has ever been able to find a measure of going concern value?

A. Everybody that has ever bought and sold has found a measurement satisfactory to them.

Q. They made their own, didn't they?

A. They did.

Q. Can you point to me a single instance where anybody has been able to determine a measure upon which to fix going concern value?

A. No, I have never found two valuation engineers that agreed upon the value of physical property, either, or any two accountants that ever agreed upon the original cost of a property. You have to use some judgment. There isn't any rule by which you can put an office boy in business and make him a success.

Q. That is right. You are definitely of the opinion that the phrase, "going concern value" as used by you doesn't necessarily contemplate any element of cost?

A. If I understand your question, I want to make that plain. It does contemplate an element of cost that would

be involved if that going concern value wasn't there and if you had to create it after you bought the physical property. It would cost you money to do it and therefore you will pay something for it when it is attached.

Q. In other words, although it just appeared on the scene you still create an element of cost there for it?

A. Is there anything in the sales to indicate that somebody waved a wand? These sales—both the number of customers and sales per customer have gone up ever since the start of it.

Q. We are now going back to Exhibit No. 246?

A. Yes.

Q. All right, I was just going back to that myself.

I am particularly concerned, very much so, about where you figured this 16,678 customers in the year 1940 as being part of and constituting your basis of going concern value in the Colorado-Wyoming Gas Company.

A. Because they are the customers that have been educated to the use of natural gas and who have been persuaded to buy and install natural gas furnaces and all other types of natural gas equipment down through the years and who are now supplied by us.

Q. And just because they happen to be so supplied by Colorado-Wyoming Gas Company, they constitute this additional element of value, as you call it, to the Colorado-Wyoming Gas Company?

A. Yes, sir. I have seen plenty of pipe lines laid to large towns where they were unable to create that demand and both the company and the security holders suffered thereby.

Q. And when you go to the first one, the Cheyenne Light, Fuel & Power Company, it being on Page 1, Exhibit 246, you find that is a distributing company?

A. Yes, sir.

Q. It operates a natural gas distribution plant?

A. Yes, sir.

Q. You have that company listed on Page 1, Exhibit 246, as having 4,777 customers attached in 1940.

A. Yes, sir.

Q. If you were employed or retained by Cheyenne Light, Fuel & Power Company to make a study of the value of the properties of Cheyenne Light, Fuel & Power Company

as of this time, what added value would you attach to Cheyenne Light, Fuel & Power Company for these 4,777 customers?

A. I would have to make a study of that before I could make a statement on it.

Q. You have it included as part of your basic value—basic part of this $175,000 that is going into Colorado-Wyoming Gas Company?

A. Yes, sir, and I will tell you the reason why it is in there in just a second.

Q. At this time I want you to tell me what going concern value you would set up for the Cheyenne Light, Fuel & Power Company in 1940 for those 4,777 customers.

A. I wouldn't want to do that now.

Q. How do you figure these 4,777 customers enter into your calculation here?

A. I will tell you in just a second.

Q. All right.

A. In 1926 those 1824 customers in Cheyenne used roughly about 28,000 feet of gas per customer; in 1940, 4,777 customers used roughly about 100,000 feet per customer. There has been a lot of educational work done in the meantime. Not only are there more customers but better customers and that is something that takes a long time to build up. It can't be done over night for two reasons;

One, your natural gas plant produces gas that has a large number of heat units than artificial gas and the first thing you have happen will be your sales per customer go down until you can get those customers to start using gas for other reasons. That takes time for two reasons;

One, to get them educated to want it; second, their financial condition may make them pick out the time when they will spend the money to put in a furnace. Sometimes it is a year, sometimes it is two years, and sometimes it is three years.

Q. Cheyenne Light, Fuel & Power Company is the one I am talking about. They would have to do all of that to get the going concern value you would be setting up for them in 1940?

A. That is true.

Q. For these 4,777 customers?

A. Yes, sir.

Q. You would be setting up a going concern value estimate for them?

A. Yes, sir.

Q. Say they were in a rate case—

A. Yes, sir.

Q. —these same 4,777 customers—

A. Yes, sir.

Q. —and you would come down to the Public Service Company of Colorado and they were in a rate proceeding. You would get for the Fort Collins district 3266 customers in 1940 and set up a going concern value for those 3266 customers for the Public Service Company of Colorado, wouldn't you?

A. Yes, sir.

Q. It would be set up for them to include in their valuation of property in that company?

A. That is true.

Q. That same 3266 customers you have here?

A. Yes, sir.

Q. In the same fashion you would proceed for the other distribution points on the Public Service Company of Colorado's system; that is, 3,324, 473 and 2,193 customers in 1940?

A. Yes, sir.

Q. They are the same ones you have set up on this exhibit?

A. Oh, yes.

Q. Then if you would make an appraisal and a going concern cost estimate for the Greeley Gas & Fuel Company you would determine what the going concern value would be of that company in a rate proceeding?

A. No, each one of them in turn.

Q. And you would determine the value of attached customers in 1940 as set up on Exhibit 246?

A. That is true.

Q. You would have all these distribution companies that distribute gas and have the number of customers attached as you have on Page 1 of Exhibit 246? Each of them would be in a separate rate proceeding and in each of them you would set up a going concern estimate for these attached customers, wouldn't you?

A. Yes, sir.

Q. You would believe they would be entitled to have going concern value estimated as an additional item of value as you termed in their particular proceedings?

A. I think the chain stores have a going concern value and probably the Pillsbury Flour Company which sells them flour has one, too.

Q. What I am particularly concerned about is where you have the estimate of going concern value here of Colorado-Wyoming Gas Company, inasmuch as you are setting up $175,000 that is predicated on the 16,678 customers in 1940.

A. And the sales to them.

Q. That is right. At the same time co-existing with the present rate proceeding here, there were rate proceedings going on, separate ones involving each of these named distributing companies, in that instance you would in each of those proceedings set up an estimate of going concern value based upon these same customers?

A. Yes, sir.

Q. There would be a slight duplication there, wouldn't there?

A. No.

Q. None at all?

A. No, none at all, any more than there would be a duplication between your retail distributor of Ford cars here and Mr. Ford's plant. If somebody in town is selling three or four thousand Ford cars a year he has a business that is profitable and if he has built it up over a long period of time it has a going concern value, but it is no indication of Mr. Ford's plant.

Q. I don't think Mr. Ford's plant has graduated to the public service class.

A. No, I don't think it has but I would have to try to buy it from him for the physical value.

Q. Are Mr. Ford's properties being operated as a public service company?

A. No, it is not, but I can't see that there is a new set of rules and new definition dependent upon whether you are or are not in the public utility business. I know that has been attempted a lot but that is the thing I object to.

Q. All right, I am just concerned here about this possi-

bility of slight duplication, however, since you say there isn't any duplication, I will carry it on a little further.

Supposing you were valuing the properties of a transmission company that was selling its gas to one customer, the Colorado-Wyoming Gas Company, it being the sole customer, and you were asked to prepare a going concern value estimate for that X company that in turn sells its gas to the Colorado-Wyoming Gas Company who in turn sells to all of the 16,678 customers. That X company would be entitled, I take it, to $175,000 going concern value?

A. I don't know whether it would or not because it might have an operating expense that wouldn't justify its existence at all.

Q. Well, say it doesn't, say it is in fine shape just like Colorado-Wyoming Gas Company, as you say it is, and has a splendid financial condition and it has an ample supply of gas, but it has these valuable attached customers totaling 16,678.

A. Of course it would have, and so has the owner of the lease that furnishes the gas to that first pipe line.

Q. But we are not going beyond X. We are carrying your illustration to X. What is the going concern value of X company?

A. I couldn't tell you without making an investigation of it.

Q. Although these are the total customers to whom X company finally sells its gas?

A. I would have to make an investigation of that before I would want to pass any judgment on it.

Q. What would be the basis of the going concern value, these attached customers?

A. Those attached customers, its cost of gas, its operating costs, and a half a dozen other things that would enter into whether or not it would have an efficient operating organization.

If, for instance, they didn't have an efficient organization, their operating costs were too high, the going concern value would be less; if it was efficient, it would be higher, because of that operating expense.

Q. All right. We are assuming it has an efficient organization, an organization as efficient as Colorado-Wyoming Gas Company; that its financial condition is the same, and

it has the same prospect with reference to obtaining its gas supply and all of those factors being equal, but it so happens Colorado-Wyoming Gas Company is its sole customer, this same Colorado-Wyoming Gas Company with all of these sales and as you say, customers attached. What is the going concern value of that X company?

A. I couldn't tell you. If it has a contract with Colorado-Wyoming Gas Company and has six months to run and Colorado-Wyoming Gas Company is already making a contract with somebody else, it would be very small; if it had a 40-year contract with Colorado-Wyoming Gas Company and a 40-year supply of gas, it would be very different. I can't answer the questions regarding a company which I know nothing of.

Q. Supposing all of the factors, all of the financial situations, its operating conditions were identical with Colorado-Wyoming Gas Company, then what is X company's going concern value in that situation?

A. If its physical property, operating conditions, revenues, and its expectation of continuity of sales were the same, it would be the same.

Q. In other words, X company would also have $175,000 going concern value?

A. Yes, sir. If you have two eggs just alike, you are foolish if you pay more for one of the eggs than you pay for the other.

Q. I am slightly concerned about this slight duplication. X company would have the same going concern value as Colorado-Wyoming Gas Company?

A. Yes, but the X company to which you refer as Colorado-Wyoming Gas Company has an entirely different situation and that is why I don't want to pass judgment on it. I am not trying to dodge your question, but I am trying to keep from passing judgment on nothing.

Q. I believe you predicated that on the assumption all factors were the same with Colorado-Wyoming Gas Company and X company, did you not?

A. If they were, the value would be the same.

Mr. McCreery: Of course, they couldn't be the same as a matter of fact.

Mr. Lange: I am trying to determine from this witness what the going concern value would be and he said $175,000.

Q. Isn't that correct, Mr. Hamilton?

Mr. McCreery: I want to make an objection. You can't have identical factors. Here is a company with several customers, a theoretic company with several customers, and then he says "Assuming it couldn't be done."

Mr. Lange: I think there are a number of substitute costs that weren't at all pertinent in determining how many duplications that had taken place in determining what is alleged to be going concern value.

The Trial Examiner: Well, Mr. Lange, it seems—

The Witness: The conditions wouldn't be the same if you please, for the simple reason you couldn't get an insurance company to do business with only one insurance policy.

Mr. Lange: That is true, but what I am getting at here, Mr. Examiner, is—

The Witness: You have in this case several customers. It isn't within the realms of reasonable assumption that you are going to lose them all on one day. If you confine yourself to one customer you might lose that one customer on one day.

Mr. Lange: What I am concerned about is to determine how the Colorado-Wyoming Gas Company which sells gas to these three or four distributing companies and doesn't itself own those attachments or customers has a going concern value attached to its business.

The Trial Examiner: He has answered that, Mr. Lange.

Mr. Lange: I want to know how far he would go down the line in using those same attached customers.

The Trial Examiner: The difficulty is when you say "in X company the conditions are the same as in Colorado-Wyoming Gas Company"—you don't have the situation then you have in mind. The situation you have in mind, as I understand it, is when X company is the pipe line that comes up and only sells gas to Colorado-Wyoming Gas Company?

Mr. Lange: That is right.

The Trial Examiner: The conditions are not the same. The witness says that he cannot respond.

Mr. Lange: It has only these attached customers—Colorado-Wyoming Gas Company has only these attached customers. No new elements are in the picture at all.

The Witness: Just this one element which is very important in that one customer has all of the business of this X company tied up in one bundle as being owned by somebody else.

By Mr. Lange:

Q. And in this particular situation the great bulk of all of these resales are to affiliated companies, I believe you stated?

A. Yes, sir, and I don't think they are going to run away from us very fast.

Q. That is right. You are definitely of the opinion that these distributing companies that in turn sell gas to these attached customers set forth in 1940 are customers of each of the distributing companies?

A. That is true.

Q. Each of the distributing companies would in turn have the right to set up a going concern value for that business attached?

A. They have spent a lot of money getting it, too.

Q. For the same customers?

A. Yes, sir, the same customers coupled with sales. You could have the customers connected but if they wouldn't buy any gas you wouldn't care much for them.

Q. And these straight line industrial customers that you have on your Page 1, Exhibit 246—

Mr. McCreery: What did you call them?

Mr. Lange: The main line industrial customers.

The Witness: The main line industrial customers?

Mr. Lange: Yes.

The Witness: Those took a lot of time to get, too.

By Mr. Lange:

Q. They were pretty difficult to get?

A. Well, if you ever want to sit in on a negotiation with one of the engineers of one of these big plants and try to sell him his fuel supply, I think you would find that a very mild statement of the picture.

Q. I agree with you. That was the very thing I was wondering. I was wondering what any particular importance a company may attach to having nine valuable industrial customers like Colorado-Wyoming Gas Company.

A. It has a value that cuts both ways because they are better load factors than are your house heating customers attached to the distribution system, and they give you a base load which can furnish you income first; second, it will furnish you a base load from which you can pick up the variations in the domestic customer load and continue to render the domestic customer service because these people are equipped to cut off temporarily and use other forms of fuel.

In other words, let me add this: An industrial customer with a cut-off clause is a more valuable customer than a 100 per cent load factor to us because he will get off when you need the gas for other purposes.

Q. Did you tell me, or have you stated in the record how you arrived at your measure of going concern value in this particular case?

A. It is a judgment figure entirely.

Q. You just reached out and got $175,000?

A. Exactly as a horse-trader looks at a horse and decides what it is worth. He doesn't take a scratch pad and put down his nose for something and his ears for something and his hoofs for something else, at least, I have never seen anybody do it.

Q. And in that fashion you arrived at this $175,000?

A. Yes.

The Trial Examiner: You don't employ any mathematical formula, Mr. Hamilton, to arrive at your going concern value?

The Witness: No, sir, I do not. I have lots of times when the records were available, checked what it cost them to get it, but I still made up my own mind as to whether it was worth what it cost when finished. I do know in

distributing companies what it costs to add sales in terms of Mcf.

By Mr. Lange:

Q. You collaborated with Mr. Willard in the preparation of Exhibit No. 111, didn't you, Mr. Hamilton?

A. No, sir.

Q. You didn't? In that case I must have misread it where Mr. Willard stated that he is an employe and associate of F. C. Hamilton, Consulting Engineer, for Electric Advisers, Inc.

A. That is true.

Q. Then you didn't collaborated with your associate at all in the preparation of that exhibit?

A. No, sir, I did not. Mr. Willard has been with me a great many years and I think he can do it without supervision.

Q. I just wanted to know if you were in any manner familiar with what he included in his Exhibit No. 111.

A. No, sir, I don't believe I have ever seen it.

Q. You don't believe you have ever seen it?

A. No, sir.

Q. It would have no bearing at all on what you would do with reference to determining going concern value as an added element of value as you view it?

A. No, sir.

Mr. Lange: I notice that in his original exhibit 111 he has the present value of Colorado-Wyoming Gas Company and I have been trying to find somewhere in it where he has any reference to any such appraisal as exclusive of going concern value.

Mr. McCreery: Obviously, the exhibit speaks for itself. It is dealing with the physical properties alone and that is all it undertakes to deal with. This witness has no knowledge or concern with it and the exhibit itself indicates that it is dealing only with the physical property.

Mr. Lange: I think I agree with you, Mr. McCreery, that the exhibit very definitely speaks for itself. The only thing I wanted to know was whether by accident or otherwise I overlooked any such exception in it. I wanted to be sure whether Mr. Hamilton knew anything about it.

The Witness: No, sir, I do not. I haven't seen it.

By Mr. Lange:

Q. You have been pretty familiar with the preparation of valuation estimates in rate proceedings?

A. Yes, sir.

Q. Ordinarily the valuation engineer would, if he pursues the method or if his organization is going concern value minded. I have never seen one that didn't have the estimate in it, have you?

A. It is according to how you set up your summaries. Sometimes at the bottom of your totals of the physical property values you add the going concern value. Sometimes it is presented by a different witness and presented in two separate exhibits.

Q. Where it is presented by two separate exhibits it has a reference exclusive of going concern value; is that the way Mr. Biddison frequently puts his in?

A. I never saw Mr. Biddison present a going concern value.

Mr. McCreery: Just to clear the record at this point, the testimony given at the time made it very clear exactly as to what the purpose and the character of Exhibit No. 111 was, if you will make reference to the transcript.

Mr. Lange: I think, Mr. McCreery, we can settle that right now at Page 7, Exhibit 111, where Mr. Willard says here in the explanatory statement: "This exhibit sets forth, for the purposes of this case, the value of the property of the Colorado-Wyoming Gas Company."

Mr. McCreery: Then he stated to you on cross examination that that was the value of the physical property he was considering.

Mr. Lange: I don't recall, Mr. McCreery, that there was ever anything referred to by Mr. Willard as being less than the value of the company's property, but I wanted to know from Mr. Hamilton as to whether he knew anything about it.

The Witness: No, I do not, not a thing.

By Mr. Lange:

Q. Mr. Willard states in his explanatory statement in Exhibit No. 111: "This exhibit sets forth, for the purpose of this case, the value of the property of the Colorado-Wyoming Gas Company."

A. I think if Mr. Willard had attempted to put going concern value in there, he would have made the phrase read: "the property and business of the company."

Q. The property and business of the company?

A. Yes, sir.

Q. Is that something in addition to value? What does the word "value" in your opinion mean if it is used as Mr. Willard stated, "This represents the value of the property of this company?

A. The value of the physical property of the company.

Q. You would read the word "physical" into that?

A. I would in that phraseology, yes.

Q. You would?

A. Yes. Present value by most people is assumed to be the cost of reproducing or original cost less the accrued depreciation of the physical property. That is the reason the word "present" is in there, that they have deducted depreciation, and of course that is a deduction from physical property alone."

Q. That is very true, Mr. Hamilton, and that is why I am referring to Mr. Willard's explanatory statement, because he doesn't use the word "present" at all. He doesn't modify the word "value" at all. It is the value of the property.

A. You ought to go after Mr. Willard if you don't like his phraseology, not me.

Q. I was wondering about that when this afterthought of going concern value got into the picture.

A. I don't think it is an afterthought. It has never been in any valuations I have presented.

Q. You didn't present this valuation?

A. No, but my organization did.

Q. That is why I was wondering if you weren't familiar with what was being done. You said you didn't know what was in Exhibit No. 111.

A. It was for the simple reason I happened to be engaged in a Cities Service case and have been continuously engaged for a long time. I have men perfectly equipped to inven-

tory and determine the physical property. Mr. Willard was sent out here to do the job—

Q. You assumed he would complete the job, Mr. Hamilton?

A. I didn't assume he would because he hasn't had the experience I have had in the purchase and sale of property.

Q. He wouldn't be able to make an estimate of attached customers?

A. I think he would be able to make an estimate but I would prefer my own to his.

Q. You didn't have anything to do with the getting up of the inventory of these properties either?

A. No, sir. That was done by others of my men.

Q. Now, these charts you have attached, graphs attached here to your Exhibit 246, do you have them before you?

A. Yes, sir.

Q. I noticed that the total customers served, when you used the words "total customers served," you again had direct reference to that 16,678 customers, the figure that appears on Page 1 of the exhibit?

A. That is true.

Q. You are not confining yourself to the 17 customers that you sell directly for resale?

A. No, sir. The second chart excludes the ones we sell directly.

Q. The main line sales?

A. Yes, sir.

Q. The second chart just confines itself to resale customers but where you use the term "total customers served" on that second chart, you also have in mind that number of customers as set forth on Page 1, Exhibit 246?

A. That portion of them to which gas is sold for resale.

Q. That is right. Now, on Page 1, Exhibit 246, do you include in this 16,678 customers in 1940 those under what is designated as public authorities?

A. Yes, sir.

Q. Fort Logan and Fort Warren?

A. Yes, sir.

Q. Do you know the manner in which gas is handled, or, rather, how gas is distributed at Fort Logan and Fort Warren?

A. No, sir, I do not. I am not familiar with that distribution up there.

Q. Colorado-Wyoming Gas Company sells its gas at these two points to the United States War Department, doesn't it?

A. Yes, sir.

Q. At Fort Logan and Fort Warren?

A. Yes, sir.

Q. And these 189 attached customers in 1940 and 72 at Fort Logan, you don't know anything about them?

A. No, sir.

Q. You don't know of what they consist?

A. No, sir.

Q. They are all in the Government Reservation? You don't know anything about them?

A. No, I do not.

Q. Now, this Federal Correctional Institution that you have under public authorities, there you have three attachments in 1940. Do you mean they have three places of delivery?

A. Yes, sir, I assume that is true.

Q. To the one institution?

A. I don't know whether it is to the one institution or not. I assume it is delivered to two or three buildings at one institution, but I am not sure of that.

Q. It is just one customer there, the Federal Correctional Institution?

A. Yes, sir.

Q. Did you state there was no miscellaneous main line sales in 1940?

A. That is true.

Q. I notice in 1939 you had fifteen of them. What became of those?

A. My understanding is that they were right of way customers and we finally got them out.

Q. And they are now being served by Public Service Company of Colorado?

A. I couldn't tell you.

Q. You wouldn't know?

A. No, sir.

Q. These figures that you have set up in this exhibit, were they prepared by someone on the Colorado-Wyoming Gas Company's accounting staff?

A. With the assistance of Mr. Willard.
Q. And given to you?
A. Yes, sir.
Q. For use in your exhibit?
A. Yes, sir.

Mr. Lange: Could we have a few minutes recess, Mr. Examiner?

The Trial Examiner: Very well. We will take a five-minute recess.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

The Trial Examiner: The hearing will be in order.

By Mr. Lange:

Q. Mr. Hamilton, going back again to your concept of going concern value, I believe you stated that you contemplated what a willing purchaser would pay a willing seller. Is that right?
A. That is true.
Q. Relating that again to the Colorado-Wyoming Gas Company upon which you have estimated $175,000, going concern value, the buyer would be pretty much interested in the company's operations generally you stated?
A. Yes, sir.
Q. And it would be very much concerned, too, I presume, with reference to the adequacy of the company's gas supply?
A. That is true.
Q. Particularly if as you say he would be willing to pay an additional sum of $175,000 going concern value, so that element has been taken into consideration by you?
A. That has been taken into consideration by me, yes, sir.
Q. And the adequacy of a company's gas supply is a very important factor that you think is necessary to take into consideration in determining going concern value?
A. Yes, if their gas is coming from a field that was on its last legs, it would be something else again.
Q. And that particular item was given consideration by you in estimating this $175,000?

A. Yes, sir.

Q. And the fact, too, that this company's—speaking of Colorado-Wyoming Gas Company—markets as they are presently and in the past, have been an important part of your consideration?

A. Yes, sir.

Q. When I say "markets," I mean the customers to whom they expect to sell and are selling gas.

A. That is true.

Q. Now, then, in your computation of going concern value, or your estimate, you spoke of the fact that having as many customers attached as this company has, the Colorado-Wyoming Gas Company, was the basis of the preparation of this chart and was the basis of your estimate of going concern value?

A. The number of customers plus the sales per customer.

Q. And that also is contemplated as set forth in your exhibit, Page 2, the sales made?

A. Yes.

Q. The customer alone without volume of sales wouldn't mean anything?

A. No, it wouldn't. In other words, if this company were just taking gas for a distributing company that for years had been selling artificial gas, it wouldn't have nearly the going concern value because I would know from past experience that it would take several years, usually about four or five years, to get the volume of sales per customer up to where it was. At first it declines when you put in the natural gas.

Q. And this volume of sales, of course, dollars paid for the Mcf. that these customers purchased; that is, every customer that purchases gas has to pay in dollars for it?

A. That is true.

Q. And you have some 16,678 customers to whom this volume of sales is attributable?

A. That is true.

Q. You also stated that these distributing companies had probably spent considerable money in attaching customers.

A. I know as a matter of fact that they have.

Q. Now, these customers that are attached and are paying the dollars for this volume of gas would be affected by any cost that the selling company would have? In other

words, if you add going concern value to this company's plant account, it would ultimately reflect itself in what these customers would pay for this volume of gas, wouldn't it?

A. It would in fixing a fair rate. It wouldn't reflect it if the rates thereby became so high they wouldn't buy the gas, because they always have that choice and the very fact that their volume per customer has gone up has indicated to me the rates must be fairly satisfactory to the customers or they wouldn't continually increase their sales per customer.

Q. Going back to your first answer, you stated that this added element of value if added to the Colorado-Wyoming Gas Company's value of the plant, would ultimately find itself reflected in what these customers would have to pay for the gas?

A. It would in fixing a rate, yes, sir.

Q. Then these customers who have become attached are eventually going to have to pay for the value they have added?

A. No, they are just going to have to pay for the gas.

Q. That is true; that is all they are going to pay for; however, it is a matter of how much they are going to pay for.

A. You are going back to the old theory I have been faced with hundreds and hundreds of times, that the customer is going to take a dollar and buy some gas with it and in addition he is going to acquire an interest in the plant. That isn't true.

Q. Oh, no, I didn't say anything about the acquiring of interest in the plant.

A. If he doesn't, then all he pays for is gas and not the going concern value.

Q. But the fact that he happens to be a customer, automatically contributes to the building up of this value which he ultimately will have to pay for.

A. It is just exactly as if you doubled the length of the line through which you had to secure the gas supply. It would be a higher physical property value on which you would have to pay.

Q. You are making that kind of a comparison. He would have nothing to do with the extent of the doubling of the length of the line—

A. He doesn't have anything to do with the creating of this going concern value.

Q. He doesn't?

A. No, sir.

Q. It just happens automatically? Of course, he and a group of others are customers if that value is brought into being?

A. You would have a hard time trying to sell it to our salesmen that it happens automatically.

Q. The fact that he happens to be a customer, even if you had the best salesmen, if he didn't ultimately become a customer he wouldn't contribute to this fixture at all?

A. Not at all. If he didn't buy any gas service, he wouldn't be of interest or value to us.

Q. The fact that he buys gas and pays dollars for gas creates this customer group that creates this going concern value?

A. Certainly, just as the sale of Gillette safety razors attaches customers.

Q. As the Gillette safety razor company does?

A. No. My conception of the company doesn't change just because some new law has been passed that puts them under a regulatory body.

Q. Gillette safety razors are not sold under a regulated price, are they?

A. No, but they are sold under competitive conditions and so is gas and it is very direct and active competition.

Q. I have just one example in going back to this illustration we had about the X company and Colorado-Wyoming Gas Company and these various distributing companies in fixing going concern values.

Supose you had a merger of this X company and Colorado-Wyoming Gas Company and the distributing companies. What would become of that composite going concern value?

A. It would be a value for the whole system. Of course the consolidated system with much more property would have a higher going concern value than when you split it up into composite parts.

Q. You would have the going concern value of X company and of Colorado-Wyoming Gas Company and of each

of these distributing companies and get a sum total of your going concern value?

A. You would, yes, sir.

Q. And even with that merger you would still have 16,678 customers?

A. That is true.

Q. And the amount of sales shown on Sheet 2?

A. That is right. I don't mean to be facetious but it is the sales and the customers. As I said, the average gas customer usually uses 35,000 cubic feet of gas per year. When you compute that into natural gas that immediately goes down and those sales have to be built up so it is the relation of the sales and the customers both.

Q. And it contemplates the prospective earning power of that company?

A. Yes, sir, but it is not based upon earning power.

Q. It is not based upon earning power?

A. No.

Q. Well, how could you contemplate it if it wasn't based upon it?

A. It contemplates a possibility of earnings but the fact that this company might be earning 100 per cent a year and is under regulation wouldn't cause me to multiply the going concern value, if it were only earning ten per cent a year, by 10.

Q. In other words, if you have a willing purchaser and a willing seller—I believe you stated a while ago that if there was a good market and you were going to have ample sales, you figured there was a going concern value?

A. Yes, sir, I did, although they were losing money as of the time.

Q. That is right, but this willing buyer would expect to make money out of it in the future?

A. He would.

Q. And because he thinks there is a good market there, he is willing to pay this added amount, depending upon making some money out of those customers he would have in the future?

A. Yes, he would pay more for it than he would for the same physical property without any customers attached?

Mr. Lange: I believe that is all for the present.

The Trial Examiner: Mr. Hamilton, at the time you fixed the going concern value of the Colorado-Wyoming Gas Company I presume that date was sometime during the year 1939 or 1940?

The Witness: During 1940.

The Trial Examiner: And during that time they were earning a profit?

The Witness: Yes, sir, they were.

The Trial Examiner: Let's assume for the moment that the company was of the kind that you have stated, which was losing money at the time this going concern value was fixed. Would you then have fixed the same going concern value?

The Witness: No, I would not have done that because there would have been expenses in prospect to get it in shape. It wouldn't have been as high but it would have been more than I would have had had I not had the customers attached. In other words, if I have to go ahead and create a portion of that going concern value, I would want to deduct from this figure what I thought it would cost me to do it.

The Trial Examiner: You do not relate the earnings of the company to the going concern value?

The Witness: No, sir, because they might be so high I could not see any prospect where they were going to be reduced or they might be low, because as in the case I cited the company was not able to go the distance we had to go to get the gas. We knew we could.

Mr. Lange: I have some more questions.

Q. With reference to the factor of adequate service that you took into consideration, adequate reserves of gas you took into consideration in arriving at this estimate of going concern value, what period of time did you have in contemplation a willing purchaser would inquire of you as to Colorado-Wyoming Gas Company's adequacy of gas for future use?

A. I would assume he would inform himself on that adequacy before he entered into the negotiations and as for myself I have been familiar with the Amarillo field in a general way ever since the first wells were drilled down there. I have been connected with companies such as the Cities Service Gas Company and the line that was built down there to take gas for them, and also with the Natural Gas Pipeline Company of America and its supplies. I have had presented to me repeated geological reports from time to time to accompany my valuations when we were endeavoring to float issues.

Q. You are informed as to the adequacy of reserves?

A. I think there is a lot of gas there and will be for quite a few years ahead.

Q. Gas will be available to the Colorado-Wyoming Gas Company?

A. Yes, sir, I assume so.

(Vol. 84, pp. 12461-12514.)

Company Exhibit 117 (Appendix this Record).

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(2) THE COMPANY METHOD OF ALLOCATION.

H. D. HANCOCK (whose qualifications and experience are abstracted elsewhere herein) testified on the subject of Allocation.

I. ALL SALES FOR RESALE.

(a). *General Explanation of Exhibit 117.*

The witness presented Exhibit 117 (see Appendix) which he stated "embraces a statement pertaining to the plant and property applicable to all sales for resale for the years 1939 to 1945, inclusive, and the volume of sales and revenue, gross and net, of all sales for resale."

As contained in his explanatory statement, he testified:

"Exhibit No. 117 shows the earnings which reasonably may be expected to accrue to the company during the period ending with the year 1945, from all 'sales for resale.'

"The total figures shown on Exhibit No. 115 covering volume of sales in M. c. f. cost of purchased gas, revenue from sales, operation and maintenance expense, and general and Federal income taxes, have been apportioned between such 'sales for resale' and all other sales. Such allocation has been projected for each year of the period ending in 1945.

"The calculated total depreciated investment of the company presently devoted to service of the 'sales for resale' customers, the primary obligation and business of the company was determined, in general, by applying the actual peak day demand of such customers to the total plant capacity of the company. The result is the investment used for total sales for resale."

(Vol. 27, pp. 3799, 3800.)

The witness testified on cross-examination that the basic figures contained in Exhibit 117 were taken from Exhibit 115 (see Appendix), and Exhibit 115 reflects, for the year 1939, the actual book figures with reference to gas sales, revenues and expenses of Colorado-Wyoming Company, and for 1940, ten months actual and two months estimated, and for the succeeding years shown in the exhibit, the items were estimated. (Vol. 27, pp. 3806, 3801.)

He was then asked:

"Q. But the present Exhibit 117, in the earnings statement that is attached to that exhibit does not reflect any actual book figures at all, even for 1939?

"A. Only to the extent that the sales for resale in Mcf. and the gross earnings from operation derived from sales for resale and the various items of expense, as for example, purchased gas expense, which would come directly from the books, is representing that portion of purchased gas expense corresponding to the previously mention sales for resale.

* * * * *

"Q. Under that classification. For instance, under 'Purchased Gas Expense' you have an item of $330,410.

"A. That item corresponds to the amount of gas purchased for sale for resale at the applicable contract rates.

"Q. But this item of $330,410 under 'Purchased Gas Expense' is an allocated amount computed by you from a larger total appearing on the company's books?

"*The Trial Examiner:* Under the same classification?

"*Mr Lange:* Yes.

"*The Witness:* I wouldn't call that an allocated amount except to the extent that minor component parts of that amount such as 'Company used gas' and 'Cost of lost and unaccounted-for gas' has been apportioned. The majority of the item is directly derivable from the books of the company, without any process of apportionment or allocation."

(Vol. 27, pp. 3801, 3802.)

The witness explained that the purpose of the calculated total investment shown in Exhibit 117 was to determine what amount of the investment of the Company's property was utilized for the sale of gas for resale and that such calculation shows that that portion of the entire investment applicable to industrial and public authorities is $106,952, depreciated to $90,551. The witness explained that this was true for the reason that the system was built to supply the customers to whom gas is sold for resale, except for small branches to industrial customers who use gas off peak times and are cut off at times of peak-day demands, this use being purely incidental to the primary use of the line.

(Vol. 27, pp. 3813-3815.)

(b) *Allocation of Plant and Investment to Sales for Resale.*

The witness was questioned in regard to the calculated investment applicable to total sales for resale and testified as follows:

"Q. Now, then let's go to the first page of your exhibit. 'Colorado-Wyoming Gas Company, calculated total investment applicable to total sales for resale.' Now, what do you mean by that? Where did you get that description, Mr. Hancock?

"A. I didn't get it any place. I merely stated it in that manner to describe the information that appears on the sheet.

"Q. Well, where were these figures taken from which appear on that page?

"A. The figures down to the line reading 'Total' in which line appears two figures as follows: $1,984,600, and in the second column $1,838,043, were furnished to me by Mr. Willard.

"Q. And what relation do they have to this exhibit?

"A. The latter figure quoted from my Exhibit 117 of $1,838,043 is the figure which appears in Mr. Willard's Exhibit 111 on the page titled 'Statement No. 1.'

"Q. Yes, that is as far as you took Mr. Willard's figures?

"A. Yes, sir.

"Q. Now, then, you applied your own calculations and allocation factors to the remainder of that page, didn't you?

"A. The remainder of the items on that page were also furnished to me by Mr. Willard.

"Q. Furnished to you by Mr. Willard?

"A. Yes, sir, in response to a specific inquiry by me.

"Q. What was the inquiry and what did Mr. Willard give you?

"A. My inquiry was as to what was the plant and investment account and the plant and investment depreciated represented by the lines used to serve gas to industrial customers and to public authority customers, meaning the specific investment devoted to those customers. For example, the branch line to each of the industrial customers and public authority customers, is included in that investment figure which is deducted from the previously mentioned figure appearing on Mr. Willard's Statement No. 1 and Exhibit 111 (see Appendix), to arrive at the investment used for total sales for resale appearing on the bottom line of the first table of my Exhibit 117.

"Q. Now, in what manner does Mr. Willard arrive at this figure of $106,952?

"A. The investment in industrial branch lines totals $59,997.

"Q. And what is that item composed of?

"A. That item is composed of the following investments in industrial branch lines:

Valmont line, 8⅝ inches in size, $12,008.60;

The Kuner-Empson line, 2⅜ inches, $933.28;

The Colorado Portland Cement Company branch line, 6⅝ inches, $27,012.73;

The Golden Fire Brick Company line, 4½ inches, $7,021.21;

The Coors Brewery line consisting of 2⅜, 1½ inch and 1-inch line, $676.03;

The Great Western Sugar Company line 6⅝ inches and 4½ inches, $6,162.50;

The Marston Lake line, 2⅜ inches, $1,385.95—strike the Marston Lake line.

"I have given the industrial lines which were included in that figure and now if I understand your question you want me to go to the other component parts.

"Q. Yes, sir.

"A. The next part is the lines to public authorities:

The Marston Lake line, 2⅜ inches, $1,385.95.

"Q. What customer does that serve?

"A. The Denver Water Board.

The Fort Warren line, 3½ inches, $8,273.49.

"The next item is the measuring stations for industrial customers.

* * * * * *

"A. The cost of the measuring stations for the industrial customers is as follows:

Colorado Portland Cement Company, $1,625.95;

Continental Oil Company, $505.30;

Coors Brewery, $792.06;

Denver Pressed Brick Company, $356.37;

Golden Fire Brick Company, $1,645.08;

Great Western Sugar Company, $3,193.89;

International Metal Company, $1,472.20;

Kuner-Empson Company, $1,316.44;

Producers Canning Company, $108.94;

Valmont, $5,160.11.

"Next the public authority measuring stations:

The Federal Correctional Institution, previously referred to, I believe, in the testimony as the Federal Prison, $131.29;

Fort Logan, $912.88;

Marston Lake, $610.06;

Fort Warren, $1,612.57.

"• • • The total pipe lines is $66,588.70. The total measuring stations is $19,609.37, making a grand total of $86,198.07.

"The next item to be included in this property devoted to the service of industrial gas customers and public authorities is that portion of the main line investment which is used by the public authorities.

"Q. What character of use do you mean?

"A. For the purpose of transporting gas which is sold to the customers classified as public authority customers.

"Q. I see.

"A. The public authority customers receive gas on a continuous basis and therefore a portion of the main line investment is properly allocable to that business as well as a portion of the compressor station investment which is used for the purpose of compressing gas delivered to public authority customers. The total of such main line and compressing station investment used by public authority customers is $13,180.

"Q. And how did you arrive at that allocated figure?

"A. The gas delivered to Fort Logan traverses 1.531 miles of 10-inch main line. The investment in that main line per Mcf. of peak day capacity is $13.82 per Mcf. The

investment per mile per Mcf. at peak day capacity is $1.0198. The investment per Mcf. of peak capacity for the Fort Logan business is therefore $1.561. The peak day is 25 Mcf. Therefore, the investment actually used by Fort Logan in the main line is $39.

"Following the same method I have computed the investment used by the delivery to the Denver Water Board at Marston Lake, it being 2.491 miles from the beginning of the 10-inch main line and resulting in an investment of $183.

"I take it, Mr. Lange, that having followed the same method, I can testify as to the—it would answer your question if I gave the resulting figure.

"Q. If you followed the same method in each one?

"A. Yes; sir. The only difference being a different number of miles.

"Q. And give the number of miles on that, then, Mr. Hancock?

"A. I have already given it on Marston Lake which is 2.491.

"On the Federal Prison which is 2.560 miles from the beginning of the 10-inch line, the investment used in making such delivery is $26.

"The total of the three foregoing items is $248. The proportionate part of the investment in the Arapahoe compressing station is 1.26 per cent, meaning by that that the peak day demand by the three previously mentioned public authority customers is 1.26 per cent of the maximum daily amount of gas passing through that line which results in an apportionment of $530 investment in Arapahoe station to the three previously mentioned public authority customers.

"The calculation of the main line investment used by Fort Warren is somewhat more complicated. Since a number of branch lines leave the main lines between Arapahoe and the Fort Warren junction, it is necessary to compute the portion of each section of line between branch lines. By following the same method above explained for the first three public authority customers, I arrived at the following conclusions:

"For the Arapahoe-Golden branch junction, the portion of the investment used by Fort Warren in that 13.552 miles of line is $719.

"In that portion of the main line extending from the Golden branch junction to the Boulder branch junction comprising 16.227 miles of line, the investment used by Fort Warren is $1,055.

"For that portion of the Boulder branch line—strike that. For that portion of the main line from the Boulder branch junction to the Brighton branch junction, being 2.533 miles in length, the investment used by Fort Warren is calculated to be $133.

"In that portion of the main line extending from the Brighton branch junction to the Greeley branch junction, being 24.14 miles, the investment used by Fort Warren is calculated to be $1,341.

"For that portion of the main line between the Greeley branch junction and Fort Collins, being 16.049 miles in length, the part used by Fort Warren is calculated to be $1,178.

"For that portion of the main line between Fort Collins and the Cement branch junction, being 5.468 miles in length, is calculated that Fort Warren's use of that investment is represented by $648.

"The next section of line extends from the Cement branch junction to Wellington station, being 7.703 miles in length and that portion of the investment used by Fort Warren is $906.

"The next section extends from Wellington station to the Fort Warren branch line junction and that portion is 27.884 miles in length and the portion used by Fort Warren is calculated to be $3,327.

"The total of the foregoing eight items representing the investment used by Fort Warren in the main line is $9,292.

"The Fort Warren sale also utilizes a portion of the compressing station investments at Arapahoe, Arvada and Wellington, being $212, $685, and $1,124, respectively, or a total of $2,021.

"The total of all of the various foregoing items of investment required to serve the four public authority customers is $12,111, according to this calculation.

"In the calculations which I have used, however, I have used an investment of $12,541, which I figured in another way and by a more simple method than the one which I have just described, and find that the more complicated method checks the simple method fairly closely, the simple method being to relate the sales to public authorities to total sales which results in the figure of 1.17 per cent of the total sale being sold to public authorities, and taking that percentage of the investment in the entire 10-inch, 8-inch and 6-inch main line, produces the figure of $12,541 which has been used.

"The next step is the addition of the working capital to the foregoing investment items and that is arrived at on the basis of working capital per dollar of total system investment, * * * which is estimated to be 2.4 cents, or a working capital corresponding to industrial and public authority sales of $2,500, which added to the foregoing total of all of the detail items mentioned of $104,024 produces $106,524.

"The last remaining item to be added to complete this investment allocation is that portion of the Arapahoe station commitments for the balance of 1940 and 1941, which amount to $428, bringing the total to $106,952, which is the figure appearing in Exhibit No. 117.

"Q. Now, in what fashion did you arrive at the depreciated figure of $90,551?

"A. By applying the actual per cent of observed depreciation to the lines in question. For example, on the industrial lines the weighted per cent condition is 76.84, and by applying the per cent condition of the lines to public authorities of 92.42, and by applying the per cent condition to measuring stations of 94, the depreciated plant and investment of $1,747,492 was arrived at from the undepreciated plant and investment of $1,877,648.

"Q. Now, in connection with Mr. Willard's Exhibit No. 111, Statement 2, the last item on that Statement 2: 'General construction expenditures, $91,619.13,' it appears on

that Statement 2 under the depreciated figure of $84,518.65. How have you treated that particular portion of the investment in your computation?

"A. The general construction expenditure which you have mentioned has been spread over the items which I have previously testified to in proportion to the relation of the total general construction expenditure to the total plant and investment, that being done in the case of the industrial lines to public authorities, measuring stations, on the basis of 5.39 cents per dollar of plant and investment, exclusive of general construction expenditures."

(Vol. 27, pp. 3803-3813.)

The witness, pursuant to previous request, gave the percentage relation of the revenue from sales for resale to the total revenue from sales as shown in Exhibit No. 117, which was:

For the year 1939 the ratio just mentioned was 69.9 per cent; for 1940, 75.3 per cent; for 1941, 75 per cent; for 1942, 75.5 per cent; for 1943, 76.5 per cent; for 1944, 76.6 per cent; for 1945, 77.1 per cent; for 1946, 77.7 per cent; for 1947, 77.9 per cent; for 1948, 78.3 per cent; for 1949, 78.5 per cent.

(Vol. 28, p. 3826.)

The witness stated that the dollar amount allocated to the Colorado Portland Cement Company was "the plant and investment in the 6⅝ Cement Company branch line, 19,434 feet in length, is $27,012.73 and the plant and investment depreciated is $15,828.16 and that this is exclusive of the organization expense and other known physical items which have been added to the specific investment in each line." This would be at the rate of 5.39c per dollar of plant and investment. Similar totals were then given for the Great Western Sugar Company as $4,764.70 and the Valmont line as $11,710.52. (Vol. 28, pp. 3830-3832.)

The witness testified as to deliveries of gas to the Colorado Portland Cement Company, which in 1927 were 40,633,000 cu. ft. and 1,298,567,000 cu. ft. in 1928. The total sales in 1927 were 604,737,000 cu. ft., of which 189,523,000 cu. ft. were delivered to the Cheyenne Company and 340,213,000 cu. ft. to Fort Collins; 40,633,000 cu. ft. to the Ce-

ment Company and 34,368,000 cu. ft. to miscellaneous main line sales. For 1927 the Cement Company received approximately 67% of the total deliveries; in 1928 the Cheyenne Company received 290,053,000 cu. ft.; Fort Collins, 453,926,000 cu. ft.; the Cement Company, 1,298,567,000 cu. ft., and miscellaneous main line customers, 9,411,000 cu. ft., making a total of 2,051,957,000 cu. ft., of which the Cement Company used approximately 63%. All of the deliveries during these two years were from the Wellington Field. (Vol. 28, pp. 3833, 3834.)

In 1929 the Cement Company received 696,891,000 cu. ft., which was approximately 43% of the total sales volume. (Vol. 28, p. 3835.)

In response to inquiry by Commission counsel, Mr. Hancock stated: "The amount of the investments in the various lines and the amounts of the organization and other known physical costs were furnished to me by Mr. Willard, and the computations to which I testified yesterday were made by me or under my direction." (Vol. 28, p. 3836.)

* * * * *

Q. Now, then, Mr. Hancock, with reference to this calculated total investment that you have on Exhibit 117, the ultimate objective by you is to determine what amount of the investment of this company's property was utilized for the sales of gas for resale?

A. That is right.

Q. All right, then, what kind of investment structure had to be built if you wanted to determine how the gas could be delivered to the industrials and public authority customers by this company?

A. I made no endeavor to do that.

Q. You made no endeavor to do that?

A. No, sir.

Q. Well, this company has from its beginning served both for resale as well as to industrial main line customers and public authority customers, hasn't it?

A. Generally speaking, that is true.

Q. And the way you have it constructed, the only portion of this entire investment that is applicable in your opinion to industrial and public authority customers on this company's system is $106,952, plant and investment depreciated to $90,551?

A. That is right. If the system was built as it is to supply only the customers to whom gas is sold for resale, it would be necessary to have the plant, as here indicated, represented by the plant and investment figure of $1,877,648.

Q. But the system was not in fact so built, was it, Mr. Hancock?

A. It was so built except for small branches to these industrial customers who use gas off peak and are cut off at time of peak day demand.

Q. Now, how was the system built that you attempt to apply to your calculated total investment here given in Exhibit No. 117?

A. You say, how was the system built?

Q. Yes, with reference to your interpretation of the applicable total investment of property, resale customers.

A. The general pipe line system was built as it now is primarily to serve the customers receiving gas for resale.

Q. Well, when you say right there "primarily" what do you mean by "primarily" with reference to the total?

A. It means that the system was built, having in mind the gas volume requirements of the customers now receiving gas for resale, and the connection of industrial customers through specially built branch lines devoted solely to the service of these industrial customers, was purely incidental.

Q. Purely incidental?

A. Yes, sir, and did not affect the construction of the main pipe line system as a whole.

(Vol. 27, pp. 3813-3815.)

* * * * *

The second question related to the location of sections of the 10-inch, 8-inch and 6-inch main lines where reconditioning operations were expected to take place in 1940, 1941 and a portion of 1942.

On the 10-inch main line there were 1300 feet of pipe line involved as follows: Station Nos. 984 to 994, involving 1,000 feet of 10-inch main line. This section is along the foot of the earthen dam of the Calkins reservoir, and is alternately wet and dry. The line, however, is in dry soil both north and south of the 1,000-foot section, it being through a wheat farming area.

Also along the 10-inch main line is 300 feet of pipe line scheduled for reconditioning between stations Nos. 938 and 941. This short section of line is across a small creek and there is only about 100 feet of line to be actually reconditioned but it is necessary to lift the 300 feet in order to raise the 100 foot section above water. The line is in dry soil both north and south of the previously mentioned stretch of line and is in a wheat farming country.

On the 8-inch main line there is involved in the reconditioning program for the previously mentioned period of time, 8,800 feet of line as follows:

Between stations 2081 and 2100 there is 1900 feet of 8-inch pipe line in alternately wet and dry soil through a beet farming area between the St. Vrain River and the Left-Hand creek. Between stations 2058 and 2063 there is 500 feet of 8-inch main line across left-hand creek and swampy ground adjacent on the south side, also in the beet farming territory. There is also 3200 feet of 8-inch main line between stations 2149 and 2181 through very wet beet farming area on the south side of the St. Vrain River and across the river. There is 1600 feet of 8-inch main line between stations 3423 and 3439, alternately wet and dry soil just north of the gate box at Station No. 3423 plus 60.

There is also 1600 feet of 8-inch main line between stations 3456 and 3472, in alternately wet and dry soil. This makes a total of 8800 feet of 8-inch main line scheduled for reconditioning.

On the 6-inch main line there is a total of 10,500 feet of main line to be reconditioned as follows:

300 feet of pipe line between stations 4270 and 4273, near an irrigation ditch which is wet during the growing season and dry in winter. The soil is dry both north and south of the 300-foot section. This line was carefully inspected in 1931 but no reconditioning work was done on it at that time.

There are 4,600 feet of 6-inch main line between stations 4383 and 4429. 62 feet of this section was excavated in 1935 and 13 feet of pipe was replaced. No more was done at that time because the beet crop on the right of way was

then in the growing stage. It now becomes necessary to recondition the entire section through the beet field. That portion of the work is actually now being done and now being completed.

There is 1500 feet of 6-inch main line between stations 4444 and 4459 which is in another beet field alternately wet and dry.

There is also 1100 feet of 6-inch main line between stations 4519 and 4530. The corrosion of this line might be attributable to the delivery of warm gas from the Wellington station during the early years of operation of this station.

There is also 3,000 feet of 6-inch main line between stations 5514 and 5544 in wet soil underneath an alfalfa field through which Lone Tree Creek flows. This is about two miles north of the Wyoming state line. The line is in dry soil both north and south of the alfalfa field. That makes a total of 10,500 feet of 6-inch main line scheduled for reconditioning.

Q. That completes that information?

A. It does.

Q. Referring to Exhibit No. 117, Mr. Hancock, the page on calculated total investment applicable to total sales for resale, the item Investment Used by Industrial and Public Authority Customers, under Plant and Investment, Total $106,952 and Depreciated $90,551.

A. Yes, sir.

Q. What portion of that dollar item was allocated to Colorado Portland Cement Company by you; and at that point, before I forget it, the name of that company before the service was installed was the Ideal Cement Company?

A. It may have been. I still think the parent company is the Ideal Cement Company, but I am not sure of that.

Q. So if there was any reference to Ideal Cement Company it would refer to this plant?

A. That is right.

Q. All right.

A. The Plant and Investment in the 6-5/8-inch cement company branch line, 19,434 feet in length, is $27,012.73, and the Plant and Investment Depreciated is $15,828.16; and that, as testified to yesterday, is exclusive of the Or-

ganization Expense and other known physical items which have been added to specific investment in each line.

Q. What would that amount to?

A. That has been added to the overall amount in my calculations instead of to the individual line items.

Q. Couldn't you attribute the proportionate amount that would be under your method allocatable to this particular service?

A. It would be proportional.

Q. In what per cent?

A. At the rate of 5.39 cents per dollar of plant investment amount.

Q. That is the total that you have allocated to that customer under your item of investment used by industrial and public authority customers on Exhibit No. 117?

A. That would be the effect of what I have done.

Q. What is the total you have allocated to Great Western Sugar Company?

A. I have two items, if you wish them. Do you wish them individually or totally?

Q. Yes.

A. 4-½-inch pipe line, 345 feet in length, plant and investment, $310.50; plant investment depreciated, $252.81; 6-⅝-inch line, 4,180 feet in length, plant and investment, $5,852; plant and investment depreciated, $4,764.70.

Q. Is that the total amount?

A. Those are the two amounts that make the total.

Q. The two amounts that make the total?

A. Yes.

Q. What about the proportionate part of the undistributed?

A. The same statement applies to this as I made in regard to the Colorado Portland Cement Company line.

Q. Now, the total amount that you have allocated to the Valmont line is what?

A. The Valmont line is 8-⅝, 6,275 feet, plant and investment, $12,008.60; plant and investment depreciated, $11,710.52.

Mr. McCreery: Does that include the measuring equipment, Mr. Hancock?

The Witness: No, sir. I am now referring only to the pipe lines.

I believe I read into the record yesterday the investment in the individual measuring stations to each of these industrial customers and the public authority customers.

Mr. McCreery: I wanted to clear that point up. That is all.

By Mr. Lange:

Q. Now, then, do you have the Mcf. delivered to the Colorado Portland Cement Company for the years 1927 and 1928?

A. Yes, sir.

Q. All right.

A. In 1927, deliveries to Colorado Portland Cement Company, 40,633,000 cubic feet; in 1928, 1,298,567,000 cubic feet.

Q. Now, going back to 1927, do you have the total deliveries for that year in Mcf., and is the 1927 figure one that represents a whole year or what portion of a year?

A. There are two questions there. I will answer the first one first.

Q. All right.

A. The total sales in 1927 were 604,737,000 cubic feet. Do you wish the ratio there?

Q. Yes, please give me the Mcf. at each delivery point during that year.

A. The previously mentioned total delivery of 604,737,000 cubic feet comprises 189,523,000 cubic feet to the Cheyenne Light, Fuel & Power Company; 340,213,000 cubic feet to the distributing company at Fort Collins; 40,633,000 cubic feet to the Colorado Portland Cement Company; and 34,368,000 cubic feet to miscellaneous main line sales not reflected on this sheet as to individuals.

The previously mentioned 40,633,000 cubic feet sale to the Colorado Portland Cement Company is approximately 6.7 per cent of the total deliveries during that year, the delivery to the cement company starting on November 5, 1927.

Q. In other words, the deliveries to the other purchasers were during that entire year compared with the delivery to the Colorado Portland Cement Company for a period from November 5 to the end of that year?

A. With the possible exception of that not applicable to small users, but in the main that is correct.

Q. Now, state it for 1928.

A. In 1928 the volume sales to the Cheyenne Light, Fuel & Power Company was 290,053,000 cubic feet; to the distributing company at Fort Collins, 453,926,000 cubic feet. To the—

Mr. McCreery: Is that Mcf. or cubic feet?

The Witness: 453,926,000 cubic feet.

To the Colorado Portland Cement Company, 1,298,567,000 cubic feet; to miscellaneous main line customers, 9,411,000 cubic feet, or a total of 2,051,957,000 cubic feet.

The sale to the Colorado Portland Cement Company previously mentioned in that year represents approximately 63 per cent of the total sales.

By Mr. Lange:

Q. Now, Mr. Hancock, with reference to the—

Mr. McCreery: May I interpose one question for the sake of clarity?

Mr. Lange: Surely.

Mr. McCreery: All gas deliveries in those two years were from the Wellington field, were they, Mr. Hancock?

The Witness: They were.

By Mr. Lange:

Q. When did delivery from the Wellington field cease?

A. The last delivery was in 1937.

Q. 1937?

A. Yes.

Q. Now, for the year 1929, give us those same figures, please.

A. In 1929 the sale to the Cheyenne Light, Fuel & Power Company was 382,283,000 cubic feet; to the distributing company at Fort Collins, 496,197,000 cubic feet; to the distributing company at Boulder, 21,490,000 cubic feet; to what I refer to as the Denver fringe district on the west side of Denver, 832,000 cubic feet; to the Great Western Sugar Company, 10,932,000 cubic feet; to the Colorado Portland Cement Company, 696,891,000 cubic feet; to miscellaneous main line customers, 10,615,000 cubic feet, making a total for all sales of 1,619,240,000 cubic feet.

The percentage which the sale to the cement company bears in relation to the total sales is approximately 43 per cent.

Q. The delivery to the Great Western Sugar Company was commenced at what time?

A. On November 30, 1929.

Q. And the town border service at Johnstown commenced when?

A. July 24, 1930.

Q. Now, again referring back to that calculated total investment made in your Exhibit No. 117, Mr. Hancock, I believe you stated yesterday that the method of calculating the allocations was carried out by Mr. Willard, or what fashion was that material delivered to you, and by whom?

A. The amount of the investments in the various lines and the amounts of the organization and other known physical costs were furnished to me by Mr. Willard, and the computations to which I testified to yesterday were made by me or under my direction.

Q. With reference to this information furnished to you by Mr. Willard, did you make any independent investigation of your own on that or what did you do, if anything?

A. No, sir, I accepted the plant and investment data furnished to me by Mr. Willard.

Q. Will you read this letter from the Colorado-Wyoming Gas Company into the record?

Mr. McCreery: Please let me see the letter.

Mr. Lange: Surely.

(The document referred to was passed to Mr. McCreery.)

By Mr. Lange:

Q. Who is that letter from, Mr. Hancock?

A. From the Colorado-Wyoming Gas Company, 407 Continental Oil Building, Denver, Colorado, and is signed by Mr. H. P. Davis, Secretary.

Q. And that is addressed to whom?

A. It is addressed to the Federal Power Commission, Central Savings Bank Building, Denver, Colorado.

Q. And bears what date?

A. November 7, 1939.

Q. Will you please read that letter?
A. Yes.

"Federal Power Commission, Central Savings Bank Building, Denver, Colorado.

"Gentlemen: Att'n: Mr. K. L. Smith, Examiner

"At the time of constructing our main line from Denver to Ft. Collins, Public Service Company of Colorado specifically requested that we include sufficient capacity in our lines to enable us to serve gas to Valmont plant. This involved changes in our construction from Arvada to Valmont Junction.

"1. Increase proposed 8-inch line from Arvada station to Boulder Junction to 10-inch size.

"2. Increase proposed 6-inch line from Boulder Junction to Valmont Junction to 8-inch size.

"The cost of this additional capacity installed in our lines under the expectation that we would be able to sell them approximately 1 billion cubic feet of gas annually was estimated by our engineers at $60,800. In addition to the above it was necessary that we construct a branch from the Boulder line to Valmont and a measuring station at the terminal. This latter branch and station shows a job order cost of $17,223, making a total investment of approximately $78,000.

"As stated above, we contemplated a load of 1 billion cubic feet annually, and, based on this volume it was determined that the business could be handled at a profit if the gross return to us was not less than 2.3 cents per Mcf. exclusive of cost of gas purchased. This was computed as follows:

"4 per cent depreciation on $80,000	—	$3200
"6 per cent return on investment	—	4800
"Compression costs on 1 billion feet estimated at 1 cent	—	10000
"Taxes, and other operating costs	—	5000
"Total	—	$23000

"Public Service Company of Colorado could not assure

us of any continuity in their usage and declined to enter into any firm commitment for gas and up to 1936 this investment, (made at their request) had not earned us a penny. At that time we insisted that a contract be entered into that would give us a fair return and depreciation on our investment. It was finally determined that in fairness to both parties they pay us a readiness to serve charge equal to depreciation and return or $8000 per year and we in turn would sell them such a quantity of gas as they care to use, up to 1 billion feet per year at a rate of 1½ cents above the price at which we might be able to purchase same from Colorado Interstate Gas Company. They could use this quantity of gas or none at all as they saw fit. The so-called 'nominal' price was mutually agreed as being the best price which we or either of us could obtain from the Colorado Interstate at such time and for such quantity as they might elect to use.

"We have no agreement with Colorado Interstate fixing the nominal price for Valmont gas. This must be bargained for separately whenever the Public Service Company notifies us that they wish to use. For deliveries made in 1939 we were able to secure a price of 9½ cents per Mcf., as evidenced by copy of attached letter from Colorado Interstate Gas Company dated May 10, 1939.

"Yours very truly,

"H. P. Davis, Secretary."

Q: Now, with reference to the agreement between Colorado-Wyoming Gas Company and Public Service Company of Colorado, being No. 9 in Exhibit No. 103, Page—rather, it is the second page of that beginning with this paragraph, Paragraph "Third" at the top of the page:

"Vendee agrees to • • •"—strike that.

"Vendee • • •"—that would be the Colorado-Wyoming Gas Company—

A. That would be the Public Service Company of Colorado.

Q. "• • • agrees to pay vendor • • •"—the Colorado-Wyoming Gas Company—"• • • for the readiness to serve provided under this contract a customer charge of eight thousand dollars ($8,000) per year applying against the

fixed charges on that part of the vendor's investment which was made for this purpose."

You are familiar with that portion of the agreement, Mr. Hancock?

A. Yes, sir.

Q. And also with the contents of that letter from the Colorado-Wyoming Gas Company?

A. No, sir.

Q. All right, is that the first time you knew of the facts set forth in that letter?

A. No, I knew of the facts but I didn't know of the letter.

Q. Well, what consideration did you give those facts?

A. I knew the facts and gave them due consideration.

Q. In connection with this exhibit you have prepared, Exhibit No. 117?

A. Yes, sir.

Q. And also in connection with the allocation factors that you have just related?

A. Yes, sir. I can give my reasons if you care for them.

Q. Yes.

A. My conclusion was that while this letter and the contract recites the facts which existed at the time of the construction, not necessarily at the time of the execution of the contract with the Public Service Company of Colorado Valmont plant, my conclusion was as follows:

That in view of the rapid growth of the load of customers to whom gas is sold for resale, as well as to a limited extent to public authorities, I wish that we had made similar contracts with other customers which would have resulted in more capacity in the main lines actually used now for sale and resale. In other words, I think it was a fortuitous circumstance which resulted in the installation of the additional capacity. If it had not been installed at that time the load could not have been handled as it actually has been handled.

Q. And you are still definitely of the opinion that the method that you have in that exhibit is the proper one?

A. Yes, the method being that the investment solely dedicated to the use of the Valmont plant is deducted; further, that we have also deducted, as testified to yester-

day, that portion of the investment in the 10-inch, 8-inch, and 6-inch main line, which is used on peak days for service to public authority customers on a somewhat theoretical basis. In other words, it only amounts to about one per cent of the investment in that line and obviously it would be impossible if the sale for resale customers were only served to make any reduction whatever in the investment required to service those customers.

Hence, if service was contemplated only to the sales for resale, those lines would need to be constructed exactly as they are.

Q. Now, you know, of course, that this contract between Colorado-Wyoming Gas Company and Public Service Company of Colorado is dated December 31, 1935, and is provided to continue in force until October 3, 1949?

A. That is right.

I would like to also point out, if I may, that there is no obligation to deliver gas on peak days; that there is no intention of using any portion of the main line capacity when that gas is needed for delivery to sales for resale and public authorities, and that is the way it actually works out under actual operating conditions.

(Vol. 28, pp. 3826-3842.)

* * * * *

Q. I see. Now, this service to Colorado Portland Cement Company has been of considerable volume as indicated by your figures for 1928 and 1929 as well as those in the exhibit of Mr. Davis, 105, and that service has been maintained pretty steadily by the company, hasn't it?

A. It has fluctuated from year to year.

Q. I mean in so far as continuity of service and lack of interruptions wherever possible is concerned.

A. It has been maintained at all times when the Colorado Portland Cement Company desired gas and when the Colorado-Wyoming Gas Company was able to furnish it.

Q. Do you know anything about a reference in Work Order No. 145, December 21, 1938?

A. No, sir.

Q. Read that, please.

A. This is what the sheet says:

"No. 145; Date, December 21st, 1938; estimated cost by accounts: Compressor stations, $988, Dr.; Compressor stations, $360, Cr.; Replacement reserves, $306, Dr.; Replacement reserves, $64, Cr.; Total, $924.

"Description: Equipped four compressors at Arvada station wtih unloading valves. There are six compressors at this station, two of which were supplied with unloading valves when new Class A cylinders were purchased two years ago. This requisition is to provide unloading valves for the other four compressors.

"Benefits, Etc.: Fuel saving of $150 per year in addition to retaining the load of the Cement plant which nets approximately $20,000 annually. Uninterrupted service to the Cement plant is very essential."

Q. The Cement plant referred to is the Colorado Portland Cement Company?

A. I believe it is.

Mr. Lange: Now, I don't know whether this is an accurate transcription of the voucher. We desire to supply an accurate transcription of that voucher—the job order, rather.

Mr. McCreery: Will you give us the number, please?

Mr. Lange: No. 145. And when that original is available, we desire—

Mr. McCreery: We'll have that after lunch.

Mr. Lange: We then desire to—

The Trial Examiner: I didn't hear your remarks, Mr. McCreery.

Mr. McCreery: I think we can have that here for Mr. Lange after lunch.

Mr. Lange: At that time, then, we will offer it.

Mr. McCreery: Do you want it as an exhibit? It is already read in the record.

Mr. Lange: Well, if it is correct as read, why, we need—

Mr. McCreery: Well, that is subject to comparison, and just leave it for that purpose.

Mr. Lange: We will offer it as it has been read, subject to any correction.

Mr. McCreery: That will be simpler, I think. I have no objection.

By Mr. Lange:

Q. Now, Mr. Hancock, what is the percentage of the total main line industrial load to the resale load for the year 1939?

Mr. McCreery: In volume or dollars?

Mr. Lange: In Mcf.

The Witness: May I have that question, please?

(The question referred to was read by the reporter, as set forth above.)

The Witness: That percentage don't mean anything to me. It involves different things. Now, may I make a suggestion?

By Mr. Lange:

Q. Yes.

A. You want the percentage of the industrial main line road to the total?

Q. To the total.

A. To the total sales?

Q. That's right.

A. For the year 1939 the industrial and main line direct sales volume was approximately 48 per cent of the total sales volume.

Q. Now, on this Exhibit 17, earnings statement, total sales for resale, 1939 through 1945, I notice that in connection with this statement your computations only go through the year 1945. The others go through the year 1949?

A. That is right.

Q. Why that difference?

A. On the statement which is extended to 1949 covering the entire operations of Colorado-Wyoming Gas Company, there isn't much variation beyond 1945 for the reason that 1945 reflects the full effect of the last step in the purchased gas contract price, and for that reason, in an effort to

simplify the calculations, the remaining years were not actually carried out on Exhibit 117.

Q. Now, your allocation factors applied to operation and maintenance in this exhibit, did you get those from Mr. Willard?

A. No, sir.

Q. Those were computed by you?

A. By me or under by direction.

Q. And they apply to all items under operation and maintenance, do they not?

A. Yes, sir.

Q. And, of course, the totals follow in like order?

A. Yes, sir.

Q. And these allocations were computed by you with a view of relating them to the allocations as had been prepared by Mr. Willard and used by you on the calculated total investment, the page preceding this?

A. We used the figures prepared by Mr. Willard which are not allocations but actual figures from the books for various purposes throughout this Exhibit 117. The plant and investment figures so procured from Mr. Willard I used in allocating taxes and maintenance and items of that character as well as arriving at the total plant and investment which is used by customers to whom gas is sold for resale.

Q. And what I really want to be certain about is that the allocations as reflected by you in the earnings statement and the figures there computed were intended to be related—or, rather, to be applied to the figures as reflected on the calculated total investment sheet preceding?

A. That is right.

Q. And you computed with that in mind?

A. That is right.

Q. Now, referring back to this earnings statement again, Mr. Hancock, particularly as to operation and maintenance expense, I don't know whether there is clearly reflected in the record the method pursued by you in making your allocations of expense items, of all of those operating and maintenance items, I should say, to be accurate.

A. The first item is the cost of gas purchased, and is arrived at by computing the cost of gas purchased for resale by Colorado-Wyoming Gas Company to customers who re-

sell the gas. Those volumes are computed at the rates set forth in the purchased gas contracts.

Q. Yes, that is on your purchased gas expense?

A. Yes, sir.

Q. Now, on transmission operations—

The Trial Examiner: Mr. Hancock, did you include in that the unaccounted-for gas?

The Witness: Not in the figure I have just mentioned but I did include it in the total figure which appears on this sheet. For example, the $330,410 for the year 1939 includes $323,024 for cost of gas purchased for resale and $2,428 for company used gas and $4,959 for lost and unaccounted-for gas, making the total appearing in the exhibit.

Mr. McCreery: Well, the lost and unaccounted-for gas was paid for at this same rate?

The Witness: It was paid for at the contract rate.

Mr. McCreery: Yes.

The Witness: However, the company used gas was paid for at the industrial gas—

Mr. McCreery: Yes, but I meant the unaccounted-for gas.

The Witness: That is right.

By Mr. Lange:

Q. Let me understand exactly what you did with reference to the line lost gas—your unaccounted-for.

A. Do you mean how I computed it?

Q. How you allocated it.

A. I took each of the industrial and public authority lines to which I have referred in previous testimony and computed the number of miles of 3-inch equivalent main contained in those lines, and also computed the average pressure at which those lines operate, and thereby obtained data on which to base the lost and unaccounted-for gas calculation.

Q. All right, now, under your next item, transmission maintenance.

A. Transmission operation.

The Trial Examiner: Operation.

By Mr. Lange:

Q. Operation; that's right.

A. That item includes the same item for company used gas which appears in the purchased gas expense as well as the operating cost of the compressing station facilities which are devoted to the sale of gas for resale. It also includes an item for mains operation, and that has been arrived at by computing the ratio of the mileage which the industrial and public authority lines bears to the total mileage in the system of the company, that ratio being 5.75 per cent. The measuring station operation which is the last item in the caption has been computed on the basis of the number of measuring stations serving industrial and public authority customers to the total number of measuring stations, that ratio being 17, industrial and public authority stations and 38 total, which is 44.7 per cent, which is due to the operation of industrial and public authority stations and that is deducted from the total measuring station operation to obtain that portion due to sale for resale customers.

(Vol. 28, pp. 3849-3856.)

* * * * *

Redirect Examination.

By Mr. McCreery:

Q. In operating and maintaining and carrying on the operations such as Colorado-Wyoming Gas Company carried on in the delivery of gas, particularly to its sale of gas for resale, which in a large part relates to house heating and domestic use, is it not a necessary practice to provide even against what may not be expected with respect to its ability to deliver gas under all circumstances?

A. Yes, it is necessary to provide against the maximum load which may be expected, and in my opinion to provide some surplus over and above that

Q. And to anticipate there may be under those stress conditions a reduction in pressure deliveries?

A. Yes, there is no assurance that those reductions will not take place and we have to be governed by what we be-

lieve to be the minimum pressure at which gas will be delivered. That is all we can depend on.

Q. And in your studies which have been under review in this examination, you have considered that necessary practice in arriving at the results at which you have arrived?

A. Yes, but I have not gone the full distance. It may be necessary if experience proves in the future that the pressures go below the 75 pounds that I referred to, that even more compressor station capacity than I have included here will be necessary, but for the moment that appears to be the required amount.

Q. And that pressure of 75 pounds being 25 pounds in excess of the contract requirement of delivery?

A. That is right.

Mr. McCreery: That is all.

Recross Examination.

By Mr. Lange:

Q. And if the pressure at which the gas is delivered to you by Colorado Interstate Gas Company is greatly in excess of 70 pounds, there would be that much less compression required by you?

A. That is correct on those days when it is in excess—

Q. To the extent that it is in excess of 70 pounds in like ratio there will be less compression required by you?

A. That is correct.

Q. And with reference to the matter that Mr. McCreery has just asked you about as to the very definite concern that the company has for getting and keeping—strike out "getting and keeping"—for delivering gas for resale and maintaining pressures on that portion of its operation, it is similarly concerned, as was indicated in that work order, to maintain uninterrupted deliveries to Colorado Portland Cement Company?

A. It is concerned to make every endeavor to reduce the number of interruptions to the industrial customers to the least possible number, and that concern arises from some very real situations with which the management is confronted in that regard.

Q. You do not disagree with the fact that there is very evident concern on the part of the company, as indicated in

its work order, with reference to that continuity of service to Colorado Portland Cement Company?

A. There is no endeavor on the part of the management to take those steps which would result in uninterrupted delivery, but to take those steps towards the utilization of all of the existing facilities of the company in a manner which will result in the least number of interruptions; if those interruptions were too frequent, the industrial customers affected would stop using gas and the earning would be lost.

Redirect Examination.

By Mr. McCreery:

Q. Do you know whether or not it is a fact that there have been very definite and emphatic protests and objections by certain industrial users even with respect to the infrequent interruptions which have taken place in their use?

A. I do.

Q. In relation to what companies in particular?

A. Particularly the Great Western Sugar Company.

Q. At Johnstown?

A. At Johnstown.

Q. Is it not a fact, Mr. Hancock, that in the period from 1939 to 1940 the substantial increase and anticipated total volume of sales for resale will definitely increase in higher peak day demands from year to year under normal weather conditions?

A. That is true. Much of the added business is of a peak load nature.

Q. One further question.

Referring again to the industrials and the inquiries that were made from the industrial consumers with respect to their anticipated use, were there any of those industrials that expect to increase or decrease their facilities for use or to change their current operations in any substantial way?

A. No, the expressed intent was to proceed in the immediate future in about the same manner as they had been proceeding in the immediate past with due consideration of fluctuations in the line of business in which they were engaged.

Q. None of the industrials indicated that they expected to enlarge their facilities at the particular plants served?

A. They did not.

Q. That inquiry was made, was it not?

A. Yes, sir.

(Vol. 28, pp. 3866-3870.)

* * * * *

There are references in the testimony of this witness to the interruptions in service to industrial customers. (Vol. 28, pp. 3842-3851; 3857; 3860-3864; 3868, 3869; 3875-3880; Vol. 29, pp. 3956, 3957, 3967.)

* * * * * *

The witness gave the percentage of the industrial main line load to the total for the year 1939, as 48% of the total sales volume. The computations in Exhibit 117 included only items through the year 1945, for the reason that this year reflects the full effect of the last step in the purchased gas contract and for that reason was not continued beyond that period. (Vol. 28, p. 3852.)

(c) *Allocation Factors Applied to Operation and Maintenance Sales for Resale.*

These were computed by the witness or under his direction and applied to all items under operation and maintenance. The total investment figures prepared by Mr. Willard were actual figures from the books and were used for various purposes throughout Exhibit 117. The plant and investment figures procured from Mr. Willard were used in allocating taxes and maintenance and items of that character, as well as arriving at the total plant and investment which was used by customers to whom gas is sold for resale. (Vol. 28, p. 3853.)

Counsel for the Commission then asked the witness to explain the method used in making allocations of expense items and operating and maintenance items and the following testimony was given:

"A. The first item is the cost of gas purchased, and is arrived at by computing the cost of gas purchased for resale by Colorado-Wyoming Gas Company to customers who resell the gas. Those volumes are computed at the rates set forth in the purchased gas contracts.

"Q. Yes, that is on your purchased gas expense?
"A. Yes, sir.
"Q. Now, on transmission operations—

"*The Trial Examiner:* Mr. Hancock, did you include in that the unaccounted-for gas?

"*The Witness:* Not in the figure I have just mentioned but I did include it in the total figure which appears on this sheet. For example, the $330,410 for the year 1939 includes $323,024 for cost of gas purchased for sale and $2,428 for company used gas and $4,159 for lost and unaccounted-for gas, making the total appearing in the exhibit.

"*Mr. McCreery:* Well, the lost and unaccounted-for gas was paid for at this same rate?

"*The Witness:* It was paid for at the contract rate . . . However, the company used gas was paid for at the industrial gas—

. . . . . .

"Q. Let me understand exactly what you did with reference to the line lost gas—your unaccounted-for.
"A. Do you mean how I computed it?
"Q. How you allocated it.
"A. I took each of the industrial and public authority lines to which I have referred in previous testimony and computed the number of miles of 3-inch equivalent main contained in those lines, and also computed the average pressure at which those lines operate, and thereby obtained data on which to base the lost and unaccounted-for gas calculation.
"Q. All right, now, under your next item, transmission operation.

. . . . . .

"A. That item includes the same item for company used gas which appears in the purchased gas expense as well as the operating cost of the compressing station facilities which are devoted to the sale of gas for resale. It also includes an item for mains operation, and that has been arrived at by computing the ratio of the mileage which the industrial and public authority lines bears to the total mileage in the system of the company, that ratio being 5.75 per cent. The measuring station operation which is the last item in the caption has been computed on the basis of the number of measuring stations serving industrial and public authority

customers to the total number of measuring stations, that ratio being 17, industrial and public authority stations and 38 total, which is 44.7 per cent which is due to the operation of industrial and public authority stations and that is deducted from the total measuring station operation to obtain that portion due to sale for resale customers."

(Vol. 28, pp. 3854-3856.)

In response to a question by the Trial Examiner, the witness stated that the peak-day demand for 1940, was on January 18, and was 11,646,000 M. c. f. and on that day there were 10,191,000 M. c. f. relivered to resale customers. In November, 1940, the peak-day demand was 15,817,000 M. c. f., which is the highest peak day experienced by the Company. The industrials on that day were off a substantial part of the time. The system was fully loaded on the days mentioned. (Vol. 28, p. 3857.)

The witness stated that after the completion of the Arapahoe Compressing Station, with an intake pressure of 50 pounds, it will have a capacity of 15,100,000 M. c. f. If the intake delivery pressure from the Colorado Interstate Company is 75 pounds, the station will have a capacity of 21,200,000 M. c. f. and 175 pounds discharge pressure. (Vol. 28, p. 3858.)

The witness stated that the lowest intake pressure from the Colorado Interstate Company which had occurred to date was 71 pounds. (Vol. 28, p. 3861.)

On redirect examination the witness stated that it was the practice of the Colorado-Wyoming Company, in its operations, which in large part relate to heating and domestic use, to provide against the maximum load which may be expected and to provide some surplus above that. The Company has no assurance that reductions in intake pressure will not reach a minimum. The contract pressure is all that can be depended upon. (Vol. 28, p. 3866.)

The witness further stated on redirect examination that in the period from 1939 to 1940, there was a substantial increase in anticipated volume of sales for resale which will definitely increase peak-day demands from year to year under normal weather conditions. (Vol. 28, p. 3869.)

* * * * *

Company Exhibit 118 (Appendix this Record).

II. Sales for Resale, Cheyenne, Wyoming.

Mr. Hancock presented Exhibit 118 (see Appendix) which "relates to the sales for resale to the distributing company at Cheyenne, Wyoming, and the plant and property applicable to such sales and the operating revenue, gross and net, derived from such sale." (Vol. 28, p. 3890.)

(a) *General Explanation of Exhibit 118.*

He testified in accordance with the statement attached to said exhibit as follows:

"In Exhibit No. 118 are set forth that part of the earnings and plant investment of Colorado-Wyoming Gas Company devoted to the service of gas under sales for resale at Cheyenne, Wyoming, only.

"The earnings so apportioned, for the year 1939 and ten months of the year 1940 are based on actual operation, and for the remainder of the period ending in 1945 are allocated on the projected earnings of the company as shown on Exhibit No. 115. The volume of gas sales, total revenue and cost of purchased gas are predicated on actual and expected sales at Cheyenne for resale. Transmission and operation expenses and general taxes are apportioned. Federal income taxes were based on Cheyenne earnings so found. (Statement No. 3.)

"The portion of plant capacity and investment found for such Cheyenne service is based on the ratio of peak day demand in Cheyenne as compared with total peak day use of the main line. (Statement No. 2.)

"As a part of the exhibit there is also included an estimated plant investment required to render the Cheyenne sale for resale service. Such estimate is predicated on

actual construction and capital costs as incurred by this company in the years 1929 to 1931. (Statement No. 1.)

"The exhibit thus shows the amount of plant devoted to the Cheyenne sale for resale service and the earnings therefrom for the period from 1939 projected from year to year, to and including 1945."

(Vol. 28, pp. 3890, 3891.)

Note: Analysis of Exhibit 118 follows:

Statement No. 1, entitled "Estimated Investment," considers all items necessary in the construction, and the total estimated plant and investment is calculated and depreciated. The depreciated investment is $833,173.

Statement No. 2 is a calculation of the present main line investment applicable to Cheyenne, which has been depreciated. This table divides the investment into main line and other investments, including working capital and producing a total plant and investment, less depreciation, applicable to Cheyenne, of $665,592.

Statement No. 3 is an earnings statement of sales for resale at Cheyenne for the years 1939 to 1945, inclusive. This table shows the gas sales for resale in M. c. f., domestic and industrial, the gross earnings from operations, domestic and industrial, and cost of operation and maintenance, itemized. The net to reserves and return after payment of Federal Income Tax is shown to be in the years stated as follows: 1939, $46,175; 1940, $37,378; 1941, $35,608; 1942, $37,428; 1943, $37,319; 1944, $33,549; and 1945, $27,042.

(b) "*Estimated Investment to Serve Cheyenne Only.*"

Upon cross-examination the witness was asked if *Statement No. 1, Exhibit 118,* was not based upon an assumed situation, to which he replied "it is assumed on an estimate worked out to reflect the items referred to in the foregoing statement." (Statement No. 1.) "It is the result of engineering calculation." He further testified that the 6-inch

main line from Arapahoe to Cheyenne, as described in Exhibit 118, is based upon two-unit cost figures for the construction of the same. 41.6 miles now actually exist. This is the section between Cheyenne and Fort Collins, and the cost of installing this section was $7,248 per mile. The remainder of the 6-inch main line of 72.497 miles was figured at a cost of $6,720 per mile, which is the actual cost of the 6-inch branch to Greeley, Colorado, constructed in 1930. (Vol. 28, pp. 3892-3894.) He stated that the first portion of the 6-inch line between the Wellington Field and Fort Collins was laid late in 1925, and that deliveries from the Wellington Field, after 1926, were as follows; 1927, 620,545 M. c. f.; 1928, 2,254,599 M. c. f.; 1929, 1,718,642 M. c. f. In the year 1929, 33,943 M. c. f. were purchased from the Colorado Interstate Company. In 1926 the sales were as follows: The Cheyenne Company, 52,095 M. c. f.; Fort Collins, 157,803 M. c. f.; and miscellaneous main line customers, 57,582 M. c. f., a total of 267,480 M. c. f. In 1930 the purchases from the Wellington Field were 1,275,030 M. c. f.

The witness stated that gas flowed both north and south from the Wellington Station in 1930, and that an hour-to-hour analysis would be necessary to determine whether or not any Texas gas went north from that station. If the Wellington Field produced gas uniformly, it could have supplied the Cheyenne load in 1930. (Vol. 28, pp. 3899-3901.)

In 1931 the purchases from the Wellington Field were 453,955 M. c. f. During that year Cheyenne purchased 461,412 M. c. f. Obviously Texas gas went to Cheyenne during that year. (Vol. 28, pp. 3901, 3902.)

The witness stated that the proposed 6-inch line from Arapahoe to Cheyenne was depreciated in accordance with the results of the inspection made by the witness in September of 1939, as shown in Exhibit 107. If such a 6-inch line was constructed, a 400 H. P. compressor station would be required at Loveland, Colorado to deliver gas at Cheyenne. The estimate of $36,000 for this station is arrived at on the observed per cent condition of the existing compressing stations of the Company. (Vol. 28, pp. 3909, 3910.)

It was also calculated that a 400 H. P. station would be

required at or near the present Arapahoe station and the per cent condition of this station was in accordance with the depreciation percentages computed in 1940. The same type of a compressor unit was figured, but smaller than the one now at Arapahoe. (Vol. 28, p. 3911.)

The actual cost of the town border measuring station at Cheyenne was taken and the per cent condition of this measuring station figured in the same manner as compressor stations. (Vol. 28, p. 3912.)

The witness was questioned in regard to office equipment, and in reply he stated that in view of the fact that the present office equipment represented an investment of $3,415, it would be reasonable to assume that the operation of the $900,000 property would require $3,000 worth of office equipment, which was depreciated in the same manner as Mr. Willard's depreciated office equipment in his Exhibit 111. The same applied to automobiles and tools, which were depreciated in accordance with Mr. Willard's figures. (Vol. 28, pp. 3912, 3913.)

The organization expense of the existing company was $3,372. The witness stated that in all probability this item could not be reduced but that an estimate had been taken of $2,000.

The item of general construction expense was based on the general construction expenditures actually incurred in the per cent of the Fort Collins-Cheyenne 6-inch line of $6,542 for 41.06 miles and, using the general construction cost per mile, it was applied to the entire 6-inch line from Arapahoe to Cheyenne. (Vol. 28, pp. 3912-3914.)

The witness was questioned as to what general construction expenditures might be contemplated in the construction of such line, and he testified as follows:

"A. Generally speaking, general construction expenditures will consist of those items of construction costs which the company incurs directly in addition to the purchase of material and the letting of the labor contracts. Such item would include the inspection of the material purchased, usually at the mill before it is shipped, and the inspection of the construction work performed by the labor contractor. In building a line of this

character it would be necessary to have welding inspectors, general inspectors, and men of that specialized training in order to insure the proper carrying out of the labor contract.

"*The Trial Examiner:* Have you completed your answer, Mr. Hancock?

"*The Witness:* Yes, sir.

"Q. Oh, you say that that was all you included in general construction expenditures?

"A. Well, there would be included in the item which I have testified about all of the construction expenditures, the general construction expenditures, which were actually included in laying the Cheyenne line, and I referred to one or two items to illustrate the type of general construction expenditures which would be so included, but I would be unable from any information before me to detail exactly what those actual construction expenditures were.

"Q. Well, then, you wouldn't, in projecting this item in this estimated investment, be able to determine what the items are that go into this $18,092, other than what you say was reflected in the construction of the Greeley line?

"A. No, the Cheyenne line.

"Q. The Cheyenne line?

"A. Yes, sir.

"Q. Well, in your opinion, in preparing this estimate, what would be the items that would go into this $18,092, required in the construction of this proposed line?

"A. My same answer applies to that same question.

"*The Trial Examiner:* Mr. Hancock, I don't just understand yet how you arrive at that figure in the first instance.

"*The Witness:* The $18,092, Mr. Examiner?

"*The Trial Examiner:* Yes.

"*The Witness:* I took the actual general construction expenditures on the Cheyenne 6" line at the time it was laid, which were $6,542 and divided that by that number of miles, approximately 41 miles.

"*The Trial Examiner:* Oh, I see.

"*The Witness:* And got the general construction expenditures per mile of that end of the line and multiplied by the entire line from Arapahoe.

* * * * * *

"Q. Well, I want to know what items of general construction expenditure enter into the total figure of $18,092 which is subsequently depreciated into the figure of $16,690, which items would go into the estimated cost of investment of this proposed line?

"A. As I have previously stated, Mr. Lange, the principal item would be engineering and the services of inspectors and engineers of that kind. There would also be some miscellaneous expense, any automobile expense which the company would and was put to in the construction of the line, would include small items of legal expense, and the miscellaneous office expense which was incurred incident to handling the construction records, carrying on the work in the office such as following up the performance of the labor contract and moving the material to the job, arranging for its shipping and turning over to the labor contractor. Now, those items will constitute the $6,542 applicable to the Cheyenne line.

* * * * * *

"Q. Well, this list of figures that you say were just handed to you, represent what?

"A. The general construction expenditures on the Cheyenne line, 41.06 miles in length.

"Q. Now, can you produce for the record the figures that went into the cost of the Greeley line covering general construction expenditures?

"A. I can, but I should like to make clear again, if I haven't, that such figures are not reflected in any manner or means in my estimate.

"Q. But you state that the figures that you utilized in the making up of your estimate reflect actual cost figures?

"A. That is right, actual cost figures exclusive of the overhead costs such as general construction expenditures.

"Q. Actual cost figures for what construction?

"A. For the Greeley 6-inch line, which unit cost I have adoted for that portion of this independent line to

Cheyenne between Arapahoe and a point near Fort Collins."

(Vol. 28, pp. 3916-3921.)

The working capital figure was derived by Mr. Willard in the same manner by which I derived the working capital necessary for the present company. (Vol. 28, p. 3922.)

With reference to Statement No. 1, Exhibit 118 "Estimated Investment to Serve Cheyenne Only," the "five per cent engineering charge" (relating to that part of the estiinch cost data presented" (relating to that part of the estimate between Arapahoe and Fort Collins); interest during construction was also included in that data; and a portion of interest on excess capacity (Account No. 1021, Item 3) as capitalized on main 10-inch and 8-inch lines and Arvada Compressor Station, but none of such interest as capitalized on 6-inch main line. In the Fort Collins-Cheyenne portion of the Estimated Investment (Statement No. 1) no portion of any of these items was included.

The witness stated:

"It is also my opinion that the construction of the independent 6-inch line to Cheyenne from Arapahoe station as presented on Exhibit No. 118 actually understates what the construction cost would have been on such a line for the reason that the adoption of the Greeley 6-inch construction cost for the 72.497 miles of this independent line, that being the south end extending from Arapahoe station to Fort Collins, understates the construction cost because of the fact that the Greeley 6-inch line has a lower construction cost as actually laid because it was hot enameled throughout, and because the construction conditions on the Greeley branch line are more favorable to low construction costs than would be the case if that line was laid through the irrigated country between Fort Collins and Arapahoe in which country there are considerable portions of irrigated areas requiring special construction procedures."

In the Fort Collins-Cheyenne portion of the "Estimated Investment," the witness stated there is included:

"$6,542 being the general construction expenditure on

the 41.06 miles of 6-inch line extending from Fort Collins to Cheyenne. That results in a unit general construction expenditure of $159.32 per mile. Included in the latter figure is no item covering five per cent New York engineering charge or interest during construction.

* * * * *

"I might, in explaining that answer, call attention to the fact that this type of miscellaneous construction expenditures occurs when a property is going through the initial stages of construction and is not necessarily applicable to later additions to a going property. The initial construction, involving as it did this expenditure of $6,541.87 includes the special types of services, legal expenses, miscellaneous office expenses, consultation with the people who are appraising the wisdom of making the expenditure, and preparing for the initial construction prior to the formation of a complete organization which would later handle many of those same types of problems."

(Vol. 29, pp. 3941-3945.)

Counsel for the Commission asked the witness where on the Company books the overheads just mentioned on the Greeley line appear, and the witness answered, "Job Order 115, which job order reflects direct cost items of $139,570.84. to which is added the five per cent engineering charge, interest during construction and legal and miscellaneous expenses to arrive at the total cost of $151,882.49 which, when divided by the 22.60 miles, produces the unit cost per mile of $6,720.00 which was used in developing the cost of the 6-inch line between Arapahoe and Fort Collins as projected in the independent line study."

The witness stated that to the foregoing total were added actual overheads per mile occurring in the construction of the actual 6-inch line from Fort Collins to Cheyenne; that the total item added under "General Construction Expenditures" was $19,092.00. In addition to that item there was the direct costs of the 6-inch line, 113.557 miles in length, the Loveland compressing station, the Arapahoe compressing station, the Cheyenne measuring station, office equipment, automobiles, tools, organization expense and working capital. (Vol. 29, pp. 3946, 3947.)

(c) *"Calculated Main Line Investment Applicable to Cheyenne."*

The witness was then questioned in regard to the main line investment *(Statement No. 2, Exhibit 118)*, applicable to Cheyenne as shown in Exhibit 118 and testified as follows:

"Q. Now, on the succeeding page you have a calculated main line investment applicable to Cheyenne. What does that page reflect?

"A. This page to which you refer reflects an estimate of that portion of the existing plant and investment in the main line from Arapahoe to Cheyenne, and which is used for the purpose of supplying gas to Cheyenne.

"Q. Now, then, how did you arrive at your percentage investment in dollars applicable to Cheyenne?

"A. I first made a study of the main line, the investment therein, and the portion which was used for the purpose of supplying gas to Cheyenne. In making a study of part of the line used by Cheyenne it is necessary to treat each section of the line separately because Cheyenne makes use of different percentages of the main line from point to point along the main line. Between Arapahoe and Golden branch junction Cheyenne uses 23.904 per cent of the peak day capacity of that line.

"Q. Before we go any farther, I want to ask you this question: This computation on that page is predicated entirely on the peak day capacity estimate?

"A. That is right.

"Q. All right.

"A. Applying that percentage to the investment in that portion of the line results in the $41,879 which has been allocated to the service of Cheyenne and for that short stretch of main line. For that portion of the main line between the Golden branch junction and the Boulder branch junction Cheyenne utilizes 29.319 per cent of the investment, resulting in $61,505 devoted to the use of Cheyenne.

"From the Boulder branch junction to the Brighton branch junction Cheyenne utilizes 33.58 per cent of the investment, this being only a short stretch of line resulting in only $7,735 investment utilized by Cheyenne.

"For that portion of the main line between the Brighton branch junction and the Greeley branch junction, Cheyenne utilizes 35.281 per cent of the line which gives $77,603 devoted to the use of Cheyenne.

"For that portion of the main line between the Greeley branch junction and Fort Collins, Cheyenne utilizes 46.963 per cent of the investment which is $68,673 devoted to the use by Cheyenne.

"For that portion of the line between Fort Collins and the Cement branch, Cheyenne uses 94.600 per cent of the capacity which gives $37,497 devoted to the use of Cheyenne on the peak day.

"For that portion of the line between the Cement branch and Wellington station, Cheyenne utilizes 94.60 per cent of the investment which results in $52,824 that is devoted to the use of Cheyenne; for the remaining section of the main line between Wellington station and Cheyenne, Cheyenne uses 95.948 per cent of the investment, which results in $193,939 devoted to the use of Cheyenne.

"The total of all of the figures which I have read is $541,655 undepreciated; and applying the per cent conditions referred to in previous testimony, I arrive at plant and investment depreciated applicable to Cheyenne of $500,380 for main line investment only.

"Q. Referring back to the question I asked when we began on this particular page, it is my understanding that you applied the peak day demand in Cheyenne and I don't think we followed that through as compared with the main peak day use of the main line. I would like to have a definite explanation as to that portion.

"A. I have used in calculating the portion of the main line devoted to the use at Cheyenne the peak day data applicable to January 18, 1940, and that day was selected because it was the day of the highest peak at Cheyenne.

"Q. All right, now, in your general construction expenditures on that page, where were those figures derived from?

* * * * *

"A. The question is in regard to the $26,957 item?

"*The Trial Examiner:* That is right.

"*The Witness:* Which is the general construction expenditure applicable to Cheyenne?

"*Mr. Lange:* Yes.

"*The Witness:* That is made up of several items on the working sheets as follows:

"The interest capitalized on the 10-inch main line was allocated to the Cheyenne investment in the proportion that use was made of that 10-inch line by Cheyenne, that load being 26.854 per cent and the latter percentage being a combination of the first two percentages which I referred to in previous testimony as follows:

"From the Arapahoe measuring station to the Golden branch junction, 23.904 per cent and from the Golden branch junction to the Boulder branch junction, 29.319, that constituting the entire 10-inch line and in combination producing 26.854 per cent.

"Interest capitalized on the 8-inch main line being treated in the same manner by arriving at the per cent use made of the main line for the purpose of delivering gas to Cheyenne, that per cent being 39.564 per cent, and that also being a combination of the various sections of the 8-inch main line referred to in earlier testimony.

"Interest capitalized on the Arvada station and that in turn being allocated to the Cheyenne line on the percentage use made of Arvada station for delivering gas to Cheyenne, that percentage being the same as the percentage use made of the 10-inch main line, namely, 29.319 per cent—I will correct the last statement which is in error. The percentage use made of the Arvada station is 29.319 per cent but it is not the same as the 10-inch main line figure above referred to. The 29.319 per cent is arrived at by relating the thru-put on the peak day at Arvada station to the peak day requirements of Cheyenne.

* * * * *

"A. The next items are general expense capitalized on 10-inch main line construction, Arvada station construction and 8-inch main line construction, the total amount

of such general expense capitalized being $5,227, and the amount devoted to the use—to the service of Cheyenne, $1,683, which is done by calculating the percentage use made of the various units of property which I mentioned, the 10-inch main line at 26.854 per cent for Cheyenne, Arvada Station 29.319 per cent for Cheyenne, and the 8-inch main line 39.564 per cent, resulting in a weighted average per cent of 32.198 per cent which, applied to the total amount of $5,227 gives $1,683 applicable to Cheyenne service.

"The next and last item is general construction expense on the Fort Collins-Cheyenne line in the amount of $6,542 and that has been allocated to the use of Cheyenne on the basis of the same peak day use previously referred to; namely, 95.5 per cent, resulting in that item devoted to the use of Cheyenne of $6,249.

* * * * * *

"Q. Now, I notice that you have in this calculated main line investment both the compressing stations and those in the course of construction. Do you contemplate the presently operating stations under that first definition?

"A. That is right.

"Q. And your investment figure on that is arrived at in what fashion?

"A. It would be $236,920 referred to on this page as the total compressing station investment exclusive of the new station now approaching completion. The Arvada station has been allocated to the service of Cheyenne on the basis of 29.319 per cent which is arrived at by taking the ratio between the peak day delivery at Cheyenne on January 18, 1940, and the thru-puts through Arvada station on the same day.

"The Wellington station investment used by service of Cheyenne is arrived at in the same manner; namely, by taking the ratio of the peak day at Cheyenne to the Wellington Station thru-put and that percentage is 95.948 per cent. Similarly, the new construction at Arapahoe station has been allocated to the service at Cheyenne on the basis of 29.319 per cent which gives $10,262 of investment devoted to the service at Cheyenne.

"The total of all of these items is the amount shown for the compressing station investment and those plant and investment figures for compressing stations have been applied against them the same per cent conditions referred to in previous testimony as found to exist in November, 1940:

"Q. That is the total of $103,585?

"A. That is correct.

"Q. And now, on the compressing stations in the course of construction, how were you—strike that 'how were you'—how did you apply the percentage applicable to Cheyenne? In other words, in that instance it applies to the equipment and property not yet in use; is that correct?

"A. Just one moment, please, Mr. Lange.

"I included inadvertently in my answer regarding compressing stations, also the station in course of construction; in other words, I included the Arapahoe station along with the two existing stations.

"Q. In that previous total, you mean?

"A. Yes, sir.

"Q. Then this item of $13,102 would come out?

"A. No, I mean that in the figures which I recited before arriving at the $114,931 I referred to the Arapahoe station investment inadvertently.

"Q. I see.

"*The Trial Examiner:* But the figures, Mr. Hancock, for the Arvada station and the Wellington station are in the—

"*The Witness:* In the record as shown and will add to the $114,931.

"*The Trial Examiner:* Yes.

"Q. Then on this other item of compressing stations in course of construction, how did you arrive at the estimate of this applicable use to Cheyenne in distinction to those stations that are already in operation?

"A. I used the same percentage figure of 29.319 per cent which is the use made by the Arvada station for service to Cheyenne.

"The reason I did that was that the Arapahoe station will handle the same percentage of gas for Cheyenne that the Arvada station does.

"Q. In that one respect, of course, that is an estimated figure entirely, not derived from any actual figure?

"A. It is partly both. The figure is based on actual construction costs at Arapahoe as of September 30, 1940, of $32,411, and an estimate of commitments for the balance of 1940 required to complete the Arapahoe station of $9,688.

"Q. But the station itself, of course, is not yet in operation?

"A. I am not sure whether it went into operation yesterday or not. There was some talk of it when the cold weather hit.

"Q. I mean, in this exhibit it was prepared under the assumption at the time that the station was not in fact in operation?

"A. That is correct. It was not in operation at the time the exhibit was prepared."

(Vol. 28, pp. 3923-3934.)

The item of compressing stations in course of construction under "Calculated Main Line Investment Applicable to Cheyenne" is composed of component parts as follows: the Arapahoe station commitments for the balance of 1940, amounting to $9,688.00. By "balance of 1940" he meant subsequent to September 30, 1940.

It also includes the cost of the additional 600-horsepower unit which is scheduled for erection at Arapahoe in 1941, that cost being $35,000, which, added to the foregoing figure of $9,688, gives $44,688. The portion of those two items applicable to Cheyenne has been arrived at by taking the percentage use made of these facilities described in yesterday's testimony and calculating the portion of those investments applicable to Cheyenne, making a total of $13,102 applicable to Cheyenne.

The actual investment of $2,217 in the Cheyenne measuring station was taken. The same measure was applied to telephone lines, office equipment, automobiles and tools,

and the basis of depreciation on these items was as computed by Mr. Willard in Exhibit 111. (Vol. 29, p. 3948.)

47.38 per cent of the total actual organization expense of $2,472 was apportioned to Cheyenne, resulting in $1,644 for Cheyenne. 47.348 per cent is the weighted average per cent use made by Cheyenne of all the investment items except office equipment, automobiles, tools and organization expense. The item of $451,877 included miscellaneous branch lines, meters, regulators and other non-applicable investments which had no relation to the handling of gas for Cheyenne. It has no relation to the percentage just mentioned. (Vol. 29, pp. 3949-3950.) This item represents property used and useful in connection with service other than the Cheyenne service, and no portion of the same is related to Cheyenne. (Vol. 29, p. 3952.)

The witness stated that a certain amount of the $45,490 working capital computed by Mr. Willard in Exhibit 111 was apportioned to Cheyenne. This was apportioned to Cheyenne "taking the plant and investment figure of $1,894,421.54 appearing on Statement 2 of Mr. Willard's Exhibit 111 and relating it to the investment applicable to Cheyenne, including all of the items other than working capital, that investment bearing the percentage of 36.053 to the total investment, and I have apportioned the working capital on the basis of 36.053 of the total working capital of $45,490." (Vol. 29, p. 3953.)

The witness stated that in making the computation there is a direct relation between the dollar figures and the volume figures. The apportionment of the main line investment in each of the sections of line is apportioned to Cheyenne on the basis of use of that line in terms of peak-day relation, the peak day utilized being January 18, 1940. If the computation was made on the basis of annual volume deliveries, it would produce a different result because the load factor at Cheyenne differs from the over-all system load factor. Cheyenne uses a greater percentage of the capacity in relation to annual deliveries than does the average system on peak days because a greater percentage of the business is house heating in character. This seems to be the only logical approach to such an allocation, and in connection with this the witness testified as follows:

"Q. Is it not a fact, Mr. Hancock, for the purpose of satisfying the priority demands of this Cheyenne service that the industrials were cut off last night on this line?

"A. That is true.

"Q. Including the Colorado Portland Cement Company?

"A. That is true. The peak day requirement is the determining factor. If Cheyenne needs so many million feet of gas on the peak day, that portion of the system's capacity has to be dedicated to that capacity and can be sold to no one else.

"Q. That was done last night?

"A. Yes."

(Vol. 29, pp. 3956-3957.)

The witness stated that the total volume of gas delivered to Cheyenne in 1939 was 494,058,000, and the total system's deliveries was 3,332,446,000; which figures are found in Exhibit 115. Percentage as between these two figures is approximately 14.9. These figures are computed on the basis of the contract pressure base. (Vol. 29, pp. 3957, 3958.) The peak-day figures used, however, in the allocated investment to Cheyenne were converted to a common pressure base of 12.9. (Vol. 29, p. 3959.)

(d) *Allocation Factors Applied to Operation and Maintenance, Sales for Resale, Cheyenne, Wyoming.*

The witness HANCOCK was cross-examined in connection with "Earnings Statement, Sales for Resale at Cheyenne, 1939 to 1945," and stated that this reflected the actual sales for 1939 and ten months of 1940. The sales estimates appearing on Statement No. 3 of Exhibit 118 are identical with the Cheyenne sales figures which make up the total sales percentage in Exhibit 115, and the projections were arrived at in the same manner as testified to in relation to Exhibit 115. This also applies to the gross earnings from operation. (Vol. 29, pp. 3960, 3961.)

The witness stated that "the maintenance was apportioned to Cheyenne in the ratio of 50.5 per cent, that being the ration of the Cheyenne main line investment, or rather, to that portion of the main line investment which is used

by Cheyenne, to the total main line investment resulting in a maintenance allocation to Cheyenne of $1,161." In computing this ratio no consideration was given to volume. The cost of maintenance on these facilities would be independent of volume. (Vol. 29, pp. 3961, 3962.)

The witness testified:

"The taxes were apportioned on the basis of the relation between the investment allocated to Cheyenne and less organization and interest charges to the total plant and investment account less organization and interest charges, that relation being 36.8 per cent for the year 1939 and running substantially the same figure to the end of the estimate in 1945."

(Vol. 29, p. 3962.)

The tax figure does not include the Colorado State income tax which was included in the over-all study for the reason that no income tax is applicable to Cheyenne as a State income tax. It does not include Federal income tax.

The bulk of the tax is the real and personal tax. (Vol. 29, p. 3963.)

In response to questioning, the witness stated that this entire computation does not assume any change in the rate structure. (Vol. 29, p. 3964.)

The witness testified that in his opinion additional compressing facilities would be required at some time during the period estimated, but that this was not considered in making the computation and is not reflected in the statement.

"Q. I don't believe I got from you the method of allocation employed by you in Exhibit No. 148 on the transmission operation expense.

"A. One of the items entering into this transmission operating expense is the cost of company used gas.

"Q. That is the item you have increased in each instance in your exhibit?

"A. That is correct. The total cost of that item appears on the over-all cost estimate included in Exhibit No. 115. For the year 1939 that is $4,436. That amount

has been allocated to Cheyenne service on the basis of the relation between the volume of gas to Cheyenne to the total sales volume, that resulting in an allocated figure of $1,231, for Cheyenne.

* * * * *

"A. I have not used the direct ratio of sales volume which would be 14.8 per cent. I believe I made a hurried calculation a few minutes ago and stated that it was 14.9 per cent, but I have used a figure which reflects not only the volume of gas delivered to Cheyenne in relation to total volumes but to the fact that additional pumping is required for the Cheyenne gas; that is, additional over and above that required for other gas, which results in an allocation to Cheyenne of company used gas in the amount of 28.4 per cent, which results in the cost of company used gas for Cheyenne service of $1,231, which appears on Sheet 4 of Exhibit No. 118 for the year 1939 under the caption 'Gas Used by Company-Credit.' It is also included in the purchased gas company expense and also included in transmission operation expense.

"*Mr. McCreery:* The additional pumping required to which you refer is the use of the Wellington station for the resale gas at Cheyenne and the small amount in proportion at Fort Warren?

"*The Witness:* That is true. However, while all gas at Cheyenne must be pumped three times, or the facilities for pumping it three times must stand by and be ready to pump, other sales are pumped either once or twice depending upon the location of those sales.

"The other items of operating expense are treated as follows: Mains operation as a total expense for the year 1939 of $4,572. That has been apportioned to Cheyenne service on the basis of the relative investment in the pipe lines serving Cheyenne to the total pipe line investment, that relation being 50.5 per cent, which results in mains operation expense for the year 1939 apportioned to Cheyenne in the amount of $2,310.

"The remaining item of operating expense is measuring station operation which for the year 1939 was $6,235.

That has been apportioned to Cheyenne in the ratio of the number of stations devoted to Cheyenne service, which is one, to the total number of measuring stations of the company which is 38, the relation there being 2.6 per cent, which results in an apportionment to Cheyenne for measuring station operation of $214.

"The total of the foregoing items apportioned to Cheyenne for the year 1939 for transmission operating expense is $8,844, which for purposes of the estimate I have rounded to $8,840.

"Q. When you speak of total volumes of sales, do you include in that all classes of direct resale and all sales of the company?

"A. I do.

"Q. In your projection of that item for the future you proceed in the same fashion as you did on the previous items?

"A. I proceeded in the same fashion with reference to the method of allocation, using as the base amount in each instance the total expense for transmission operation appearing in Exhibit No. 115, and arriving at the apportioned amount for Cheyenne appearing on page 4 in Exhibit No. 118.

"You have assumed the load factor will not change during that period?

"A. The load factor will not undergo any radical change.

"Q. Well, on what assumed load factor did you proceed?

"A. 44.67 per cent for Cheyenne.

"Q. Is that the assumed or actual?

"A. Actual.

• • • • •

"Q. And you have assumed no appreciable change in that, as I understand you?

"A. If the load factor at Cheyenne changes, there will be coincidental changes in load factor on the remaining portions of the system and I do not believe that the ratio will materially change.

"Q. Oh, you relate that to the coincidental changes on the whole system or absence of any coincidental changes on the whole system?

"A. The load factor at Cheyenne is 44.67 per cent.

"Q. Yes.

"A. The load factor on the entire system will vary between 55 and 60 per cent; if the load factor at Cheyenne increases or decreases, it is my opinion that the load factor on the system as a whole will change somewhere near a corresponding amount.

"Q. Well, that is based on what factors?

"A. It is based on the factors which cause the load factor to be what it is, namely, the relation between the average day's consumption during the year to the peak day's consumption, the average day's consumption being, of course, much lower than the peak day's consumption due to the house heating demands in colder weather. If the company only served gas for cooking and water heating purposes, the load factor would be extremely high, but the house heating load which results from severe weather on a few days out of the winter results in a lower load factor."

(Vol. 29, pp. 3968-3972.)

In connection with the method of allocation employed on general expenses, other, the witness testified as follows:

"A. The general expenses, other, is apportioned on the basis of volume sale for resale at Cheyenne to the total volume sales for resale of the company, which is 29 per cent in 1939, and gradually increasing to 1945 to 29.6 per cent—not much change. I worked it out in that instance on both the volume basis and on the revenue basis, the revenue basis being a slightly higher percentage starting in 1939 with 31.4 and running fairly uniformly, ending in 1945, on this particular sheet, with 31.3 per cent. However, as I before stated, I have used the volume basis.

"Q. The total volume of resale only?

"A. That is correct.

"*The Trial Examiner:* Mr. Hancock, if you add to that total volume for resale during the year 1939, the

amount of sales to public authorities which is shown in Exhibit 115 as 36,313 M. c. f., does that increase the percentage figure to any appreciable extent?

"*The Witness:* The public authority sale is a very small percentage and would not have very much effect.

"*The Trial Examiner:* In other words, your Cheyenne sales for resale would still constitute approximately the figure you just stated?

"*The Witness:* Approximately, yes, sir. I have on a sheet here that relation worked out if it would be of any assistance.

"*The Trial Examiner:* I would like to have you state it for the record if you have it.

"*The Witness:* I have it worked out for the year 1939 and 1940.

"*The Trial Examiner:* Well, just for the year 1939.

"*The Witness:* The per cent of total sales for resale of total sales is 51.2 per cent, and the total sales to public authorities is 1.1 per cent of total sales. The total sales to industrial and main line customers is 47.7 per cent. Those are on a volume basis. I can give it to you on a revenue basis if you would like it.

"*The Trial Examiner:* No, I think that—of course, what I had reference to, Mr. Hancock, was the total of your sales for resale plus the sale to public authorities and the per cent of that figure that the total sales to Cheyenne constitute for the year 1939.

"*The Witness:* I can give you that in just a second.

"*The Trial Examiner:* In other words, according to my calculation, you have 1,742,636 M. c. f. sales for resale including public authorities.

"*The Witness:* That is correct.

"*The Trial Examiner:* During the year 1939.

"*The Witness:* And the sale to Cheyenne for all purposes in 1939 being 494,058 M. c. f., is approximately 28.5

per cent of the total sales for resale and to public authorities."

(Vol. 29, pp. 3974-3976.

On redirect examination the witness was asked if there is a difference in the cost of delivery of gas to customers depending upon location, character of use, etc., and his answers were as follows:

"A. There is a difference. Taking the question as to location first, I think I can illustrate that by what might be called an extreme example. If we had a pipe line a hundred miles long with a customer on the end of it which used, for example, half the gas and the customer using the other half of the gas was only one mile from the source of supply, obviously the investment required to deliver half of the gas to the nearby customer would not be as great as the investment required to deliver the gas to the most remote customer; so location is a very vital element in determining the investment, irrespective of volumes.

"Q. In the system of the Colorado-Wyoming Gas Company, the resale gas at Cheyenne is a delivery to the most remote customers, is it not?

"A. It is.

"Q. Now, you may proceed.

"A. As to the other elements which you mention involving the nature of use, which again is a load factor proposition, that also is important. If I may use another example, if a customer uses one thousand feet of gas a day for 365 days a year, the cost of making that delivery will be one thing because it will only require facilities to handle one thousand cubic feet per day, but if, to use an extreme example again, the other customer used 365,000 feet of gas in one day and no gas on the other days, the cost of making that delivery would, of course, be very high on a per-thousand cubic foot basis.

"Q. Which represents here again the importance of peak demands in connection with the facilities furnished by a company to supply those peak demands, aside from total volume?

"A. That is true. In the example which I have just

stated, the customer using 365,000 feet of gas in the one day has to have facilities from the source of supply to his location which will handle that volume of gas and with the obligation of delivering that volume of gas to him on the peak day, those facilities can be dedicated for no other use on the peak day, but must be reserved for the use of this illustrative customer that I have referred to.

"Q. And in the illustration, each of the two customers at the two extremes were using the same annual volume of gas?

"A. That is true."

(Vol. 29, pp. 3977-3979.)

Recross Examination.

By Mr. Lange:

Q. Mr. Hancock, this exhibit, of course, is based purely on an estimated or assumed situation, isn't it?

A. It is assumed on an estimate which has been worked out to reflect the items referred to in the foregoing statement

Q. Yes, but the estimated investment right at the outset of your exhibit, that projects and assumes a 6-inch main line from Arapahoe to Cheyenne purely as an assumption?

A. I would hardly call it purely an assumption. It is the result of an engineering calculation.

Q. I mean, it is purely an assumption as related to actuality in connection with this line.

A. That is true, but I would say that it was not an actuality.

Q. Yes. That estimated investment that you set up on that page which begins with an assumed 6-inch main line, Arapahoe to Cheyenne, will you explain in what fashion you arrived at the estimate of the items on that page? Take first the 6-inch main line.

A. The 6-inch main line from Arapahoe to Cheyenne is based on two unit cost figures for the construction of said 6-inch line. The 41.06 miles which now actually exist has been included at the actual plant and investment cost of approximately $7,248 per mile.

Q. That is the installed cost?

A. That is right.

Q. Do you assume the same installation conditions and situations along the entire line as that on the 6-inch line presently obtaining?

A. No, sir.

Q. Well, in what way do you determine the different situations that you would be confronted with?

A. For the balance of the 6-inch main line extending south from the existing 6-inch line at Fort Collins, and which balance is 72.497 miles, I have used in this estimate a cost of $6,720 which is the cost of the Greeley 6-inch line.

Mr. McCreery: Per mile?

A. The Witness: Per mile.

By Mr. Lange:

Q. And you are proceeding, then, in that same fashion with reference to the 10-inch section?

A. There is no 10-inch section. The 6-inch line extends entirely from Arapahoe station to Cheyenne.

Q. I mean in lieu of that portion that is now ten inches, what did you do with that?

A. The total 6-inch line that I have testified to as to cost covers the entire distance.

Q. Well, this additional stretch of 6-inch line would be substituted from Fort Collins southward to Arapahoe station the estimated cost of that is not computable in figures of book cost of this company's property?

A. The method which I used, which I am not sure would be called book cost or not, is as stated. The unit cost of constructing the Greeley 6-inch line—

Mr. McCreery: In what year, Mr. Hancock?

The Witness: 1930.

By Mr. Lange:

Q. Oh, you are assuming that this line would be constructed in this fashion as a 6-inch main line from Arapahoe to Cheyenne in 1930?

A. That is true. Cheyenne received its gas from the Wellington field in the early years and at the time that the construction south was necessary we have assumed that the unit prices prevailing at that time would be applicable to the extension of the 6-inch main line to Arapahoe station.

Q. As of 1930?

A. Yes, sir.

Q. Well, now, let's see. As of 1930 the Wellington field was still in full production, wasn't it?

By the way, do you have the withdrawals from the Wellington field, Mr. Hancock?

A. Yes, sir

Q. Will you give us those from the beginning of the time that they were taken over by this company?

A. The purchases of Colorado-Wyoming Gas Company from the Continental Oil Company at the Wellington field are as follows:

In 1926—

Q. Let me interrupt you if I may, please.

A. Yes.

Q. Do they begin in 1926 or is there any earlier delivery?

A. I am reasonably sure it was in 1926.

Q. I see.

A. My report on the pipe line inspections indicate that the first piece of 6-inch line between the Wellington field and Fort Collins was laid in November 1925, which would be very late in 1925, and I am not sure there were any deliveries in 1925.

Q. All right, then, in 1926, give the total volumes and then the delivery points, or the destination of that gas for each of those years. Do you just have the total volume?

A. I don't think anybody could tell you the destination.

Q. Well, at that time there weren't any deliveries made from any other field, were there?

A. It could be done during that period.

Q. That is what I mean.

A. Yes, sir.

For the year 1926 the volume is 263,912 Mcf. and the deliveries were made to the distributing company at Fort Collins and a small amount to miscellaneous line customers.

Q. And do you have the volume on each of those deliveries?

A. I do, but I read them into the record this morning.

Q. For 1926?

A. Yes, sir.

Q. All right.

A. For 1927 the purchase from Continental Oil Company was 620,545 Mcf. and deliveries were made to the distributing company at Cheyenne and Fort Collins and to the Colorado Portland Cement Company and to miscellaneous line customers.

In 1928 the purchases from Continental Oil Company were 2,254,599 Mcf. and deliveries were to the distributing companies at Cheyenne, Fort Collins, to the Colorado Portland Cement Company, and to miscellaneous main line customers.

In 1929 the purchases from Continental Oil Company were 1,718,642 Mcf., and in that year purchases were also made from Colorado Interstate Gas Company.

Mr. McCreery: That being the first year of such purchases?

The Witness: It was.

Mr. Lange: 1929?

The Witness: 1929.

The Trial Examiner: Do you have the amount of the purchases of gas from Colorado Interstate Gas Company?

The Witness: Yes, sir, I do.

In that year it was 33,943 Mcf.

By Mr. Lange:

Q. Mr. Hancock, did any of the 1929 purchase of gas from Colorado Interstate Gas Company go as far as Fort Collins?

A. That I am unable to say. Generally speaking, I wouldn't expect that it did but there might have been peak day conditions that would cause some doubt about it, the total purchases from Colorado Interstate Gas Company being so small, however, that I would say it was unlikely that it did.

Q. Unlikely?

(Vol. 28, pp. 3892-3897.)

* * * * *

Q. And you have assumed in connection with this investment that if a company were to construct a 6-inch main line from Arapahoe to Cheyenne that this would in your opinion be the estimated investment in such a line?

A. Yes.

Q. Both the plant and investment as well as the depreciated cost of such?

A. Yes.

Q. The depreciated cost of which would be $833,173?

A. That is right.

Q. As of the year 1930?

A. Is that a question?

Q. Yes.

A. I wouldn't say the depreciation would be the—that the depreciated plant and investment would be that amount as of the year 1930, but if these lines had been built as described in these years covered by this construction period, I believe that would closely represent the present depreciated plant and investment account.

Q. Of course, such a line does not in fact exist at the present time?

A. By no means.

Q. And you are not contemplating the construction of such a line for the company, are you, Mr. Hancock?

A. Not to my knowledge.

Q. Now, is the company contemplating the construction of such a line?

A. Not to my knowledge.

(Vol. 28, pp. 3922-3923.)

* * * * *

The interest capitalized on the 10-inch main line was allocated to the Cheyenne investment in the proportion that use was made of that 10-inch line by Cheyenne, that load being 26.854 per cent, and the latter percentage being a combination of the first two percentages which I referred to in previous testimony as follows:

From the Arapahoe measuring station to the Golden branch junction, 23.904 per cent and from the Golden branch junction to the Boulder branch junction, 29.319, that constituting the entire 10-inch line and in combination producing 26.854 per cent.

Interest capitalized on the 8-inch main line being treated in the same manner by arriving at the per cent use made of the main line for the purpose of delivering gas to Cheyenne, that per cent being 39.564 per cent, and that also being a combination of the various sections of the 8-inch main line referred to in earlier testimony.

Interest capitalized on the Arvada station and that in turn being allocated to the Cheyenne line on the percentage use made of Arvada station for delivering gas to Cheyenne, that percentage being the same as the percentage use made of the 10-inch main line, namely, 29.319 per cent—I will correct the last statement which is in error. The percentage use made of the Arvada station is 29.319 per cent but it is not the same as the 10-inch main line figure above referred to. The 29.319 per cent is arrived at by relating the thru-put on the peak day at Arvada station to the peak-day requirements of Cheyenne.

The next item is general expense capitalized on the 10-inch main line construction, the Arvada station construction, and on the 8-inch main line construction—

By Mr. Lange:

Q. Right before we get into that, Mr. Hancock, these items of interest capitalized that you have just mentioned, they are out of that same item of interest on excess capacity that was set up in Mr. Willard's exhibit, Exhibit No. 111?

A. I am afraid I can't identify that.

Q. In Account 1021 as he has it set up in that exhibit?

A. I am sorry, Mr. Lange, I am not sufficiently familiar with that exhibit to state that.

Q. Do you recall Mr. Willard's testimony on cross examination in connection with that item of interest on excess capacity?

A. No, sir, I was not here at the time.

Q. You were not here at that time?

A. No, sir.

Q. Then you don't know whether that item interest capitalized that you have used is a part of or that same account in 1021 which included interest on excess capacity as set up in Mr. Willard's exhibit No. 111?

A. No, sir, I do not, but to identify the amount I might

say that the interest capitalized to which I referred constituting the total of the four items referred to is $56,884 and the amount allocated to the Cheyenne service is $19,025.

Q. Well, from what account of the company's books is that item computed?

A. These figures were furnished to me by Mr. Willard in response to my request for the information.

Q. Well, do you know—or, rather, were you informed whether they are derived out of Account 1021, General Construction Expenditures, as it appears in Exhibit 111 of Mr. Willard's?

A. No, sir.

Q. Will you ascertain that, making a note of that?

A. Yes, sir, I will.

Q. So in the fashion that you stated you arrived at this depreciated figure of $24,868 applicable to Cheyenne under the item of construction expenditures?

A. I have only—

Q. You haven't completed that?

A. I have only referred to part of the items that go to make up that total. The part which I have completed testimony on totals $19,025.

Q. Oh, yes.

A. The next items are general expense capitalized on 10-inch main line construction, Arvada station construction, and 8-inch main line construction, the total amount of such general expense capitalized being $5,227, and the amount devoted to the use—to the service of Cheyenne, $1,683 which is done by calculating the per centage use made of the various units of property which I mentioned, the 10-inch main line at 26,854 per cent for Cheyenne, Aryada Station 29.319 per cent for Cheyenne, and the 8-inch main line 39.564 per cent, resulting in a weighted average per cent of 32.198 per cent which, applied to the total amount of $5,227 gives $1,683 applicable to Cheyenne service.

The next and last item is general construction expense on the Fort Collins-Cheyenne line in the amount of $6,542 and that has been allocated to the use of Cheyenne on the basis of the same peak day use previously referred to; namely, 95.5 per cent, resulting in that item devoted to the use of Cheyenne of $6,249.

Adding the foregoing items gives $26,915.

Q. And that item depreciated in what fashion gives you the depreciated figure of $24,868?

A. By applying the per cent condition applicable to the foregoing items, I arrive at the depreciated plant and investment for that item of $24,600—strike that—$24,868.

Q. Now, I notice that you have in this calculated main line investment both the compressing stations and those in the course of construction. Do you contemplate the presently operating stations under that first definition?

A. That is right.

Q. And your investment figure on that is arrived at in what fashion?

A. It would be $236,920 referred to on this page as the total compressing station investment exclusive of the new station now approaching completion. The Arvada station has been allocated to the service of Cheyenne on the basis of 29.319 per cent which is arrived at by taking the ratio between the peak day delivery at Cheyenne on January 18, 1940 and the thru-puts through Arvada station on the same day.

The Wellington station investment used by service of Cheyenne is arrived at in the same manner; namely, by taking the ratio of the peak day at Cheyenne to the Wellington station thru-put and that percentage is 95.948 per cent. Similarly, the new construction at Arapahoe station has been allocated to the service at Cheyenne on the basis of 29.319 per cent which gives $10,262 of investment devoted to the service at Cheyenne.

The total of all of these items is the amount shown for the compressing station investment and those plant and investment figures for compressing stations have had applied against them the same per cent conditions referred to in previous testimony as found to exist in November 1940.

Q. That is the total of $103,585?

A. That is correct.

Q. And, now, on the compressing stations in the course of construction, how were you—strike out "how were you"—how did you apply the percentage applicable to Cheyenne? In other words, in that instance it applies to the equipment and property not yet in use; is that correct?

A. Just one moment, please, Mr. Lange.

I included inadvertently in my answer regarding compressing stations, also the station in course of construction; in other words, I included the Arapahoe station along with the two existing stations.

Q. In that previous total, you mean?

A. Yes, sir.

Q. Then this item of $13,102 would come out?

A. No, I mean that in the figures which I recited before arriving at the $114,931, I referred to the Arapahoe station investment inadvertently.

Q. I see.

The Trial Examiner: But the figures, Mr. Hancock, for the Arvada station and the Wellington station are in the—

The Witness: In the record as shown and will add to the $114,931.

The Trial Examiner: Yes.

By Mr. Lange:

Q. Then on this other item of compressing stations in course of construction, how did you arrive at the estimate of this applicable use to Cheyenne in distinction to those stations that are already in operation?

A. I used the same percentage figure of 29.319 per cent which is the use made by the Arvada station for service to Cheyenne.

The reason I did that was that the Arapahoe station will handle the same percentage of gas for Cheyenne that the Arvada station does.

Q. In that one respect, of course, that is an estimated figure entirely, not derived from any actual figure?

A. It is partly both. The figure is based on actual construction costs at Arapahoe as of September 30, 1940 of $32,411, and an estimate of commitments for the balance of 1940 required to complete the Arapahoe station of $9,688.

Q. But the station itself, of course, is not yet in operation?

A. I am not sure whether it went into operation yesterday or not. There was some talk of it when the cold weather hit.

Q. I mean, in this exhibit it was prepared under the as-

sumption at the time that the station was not in fact in operation.

A. That is correct. It was not in operation at the time the exhibit was prepared.

(Vol. 28, pp. 3927-3934.)

* * * * *

Q. Mr. Hancock, yesterday counsel for the Commission asked for certain information, some of which perhaps you have available at this time in answer to the inquiries made then. Will you please proceed?

A. Yes. Mr. Lange inquired if the five per cent engineering charge was included in the Greeley 6-inch cost data presented and the answer is that it was so included.

The inquiry was also made if interest during construction was included in the Greeley line cost data and the answer is that it was included.

The inquiry was also made if the item of $56,884, being the interest capitalized on the main line and referred to in my testimony on December 12, was included in Account No. 1021 as shown in Mr. Willard's Exhibit No. 111. The answer is yes, and included in the $56,884 just referred to is interest capitalized on the 10-inch main line, $26,076; interest capitalized on the 8-inch main line, $29,189; and interest capitalized on Aryada station, $1,619, totaling $56,884, and not including therefor any interest capitalized on the 6-inch main line.

Q. Included in the general construction overhead cost referred to as a basis of computing the cost of the independent 6-inch line for Cheyenne, only—that sheet is headed "Estimated Investment," is it not, Mr. Hancock?

A. That is true, being Sheet 2 of Exhibit No. 118.

In the testimony of yesterday the general construction overhead expenditure—

Q. I believe I interrupted your answer with respect to that first sheet.

A. of $6,542 being the general construction expenditure on the 41.06 miles of 6-inch line extending from Fort Collins to Cheyenne. That results in a unit general construction expenditure of $159.32 per mile. Included in the latter figure

is no item covering five per cent New York engineering charge or interest during construction. There is included, however, two minor items as follows:

An interest charge of $486.31 and a direct engineering charge of $101.82. Those items of interest and engineering are distinct from the five per cent New York engineering and interest during construction previously testified to as being included in the unit construction cost as distinct from the miscellaneous construction expenditures covered by this item. It is my opinion that there is no duplication of New York five per cent engineering charge or interest during construction in this calculation; and as testified previously, it is also my opinion that the construction of the independent 6-inch line to Cheyenne from Arapahoe station as presented on Sheet 2 of Exhibit No. 118 actually understates what the construction cost would have been on such a line for the reason that the adoption of the Greeley 6-inch construction cost for the 72.497 miles of this independent line, that being the south end extending from Arapahoe station to Fort Collins, understates the construction cost because of the fact that the Greeley 6-inch line has a lower construction cost as actually laid because it was not hot enameled throughout, and because the construction conditions on the Greeley branch line are more favorable to low construction costs than would be the case if that line was laid through the irrigated country between Fort Collins and Arapahoe in which country there are considerable portions of irrigated areas requiring special construction procedures.

Q. For the purpose of a little further identification, referring to Exhibit No. 112, was there any proportion of the interest included in Account 1021 therein referred to included in the estimated investment shown on Sheet 2 of Exhibit No. 118?

A. The sheet in Exhibit 112 contains the same 6,541.87-dollar item which I have just referred to and it is that item which contains the inconsequential interest actually paid and direct engineering charges paid, but which does not include the five per cent New York engineering charge and the complete interest during construction which was later reflected into the Greeley line but not reflected during the construction period 1925 and 1926 when the Fort Collins-Cheyenne line was constructed.

I might, in explaining that answer, call attention to the fact that this type of miscellaneous construction expenditures occurs when a property is going through the initial stages of construction and is not necessarily applicable to later additions to a going property. The initial construction, involving as it did this expenditure of $6,541.87 includes the special types of services, legal expenses, miscellaneous office expenses, consultation with the people who are appraising the wisdom of making the expenditure, and preparing for the initial construction prior to the formation of a complete organization which would later handle many of those same types of problems.

Q. Going a little further, in Item 3 in Exhibit 112, is set forth the figure of $79,362.52. In this estimated investment, is any portion of that figure reflected in such estimated investment?

A. It is not reflected in the cost of the independent line to Cheyenne.

Q. Is it reflected in the tabulation set forth on Sheet 2 of Exhibit 118 under the heading "Estimated Investments"?

A. May I have that question, please?

(The question referred to was read by the reporter, as set forth above.

The Witness: It is not included in that figure but is included in the apportionment to the extent that the items applied to the apportionment.

(Vol. 29, pp. 3941-3945.)

• • • • •

Recross Examination.

By Mr. Lange:

Q. Has this company proceeded in fixing its rates on that basis?

A. No, but I have proceeded in fixing the costs on that basis.

(Vol. 29, p. 3979.)

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III. REVISION OF EXHIBITS 117 AND 118 (EX. 245).

Mr. J. L. WILLARD, in connection with Exhibit 245 (Appendix This Record), entitled: "Revised Exhibit No. 111, Plant; Revised Exhibit No. 115, Earnings; Revised Exhibit No. 117, Plant 'Sales for Resale'; Revised Exhibit No. 117, Earnings Sales for Resale'; Revised Exhibit No. 118, Plant 'Sales for Resale—Cheyenne'; Revised Exhibit No. 118, Earnings 'Sales for Resale—Cheyenne,' Years 1939-1945" (Vol. 83, p. 12,440), testified:

* * * * *

"A. This exhibit contains revised data previously submitted in Exhibits Nos. 111, 115, 117 and 118.

"The tabulations herein have been computed in the identical manner and method as in the original exhibits. They are presented only for the purpose of reflecting the effect of certain eliminations from the original figures and are not to be construed as a recognition that the eliminations are justified. Net additions to investment between September 30, 1940 and December 31, 1940 are also included.

"The eliminations reflected in revised Statements Nos. 1 and 2 of Exhibit 111 are as follows:

"(1) Engineering charge of 5 per cent in the amount of $82,792.57 has been deducted from the various accounts affected (Exhibit 199, Entry 202).

"(2) Account 1021 has been credited with $51,887.25 which is the difference between the total interest capitalized on non-utilized facilities $79,362.52 and the amount of interest calculated in Exhibit No. 244, to-wit: $27,475.27 (Exhibit 199, Entry 200).

"(3) Account 1013 has been credited with $2,844.90 'cash discount' as described in Entry No. 204 of Exhibit No. 199.

"(4) Account 1014 has been charged with an amount of $3,278.54. This amount is the net result of entries 213, 214 and 215, and 216 of Exhibit No. 199.

"(5) Account 1014 has been credited $2,111.24. This amount is reflected as a part of Entry 218 of Exhibit 199.

"(6) Account 1014 has been credited $1,007.31. This amount is described in Entry No. 219 of Exhibit 199.

"The revisions to Exhibit 115, 117 and 118 reflect a redistribution of total investment as revised in Exhibit 111, to plant applicable to 'Total Sales for Resale' and 'Sales for Resale at Cheyenne'."

(Vol. 83, pp. 12,440-12,442.) (See Vol. 85, pp. 12,831-12,835, 12,837-12,839.)

(a) *Plant Investment, Overheads and Working Capital—Allocation to "Sales For Resale."*

In accordance with the principles and methods of allocation applicable to the operations of Colorado-Wyoming Company, as next hereinbefore abstracted, "the calculated total depreciated investment of the Company presently devoted to service of the 'sales for resale' customers, (the primary obligation and business of the Company) was determined, in general, by applying the peak-day demand of such customers to the total plant capacity of the Company. The result is the investment used for total sales for resale" (Vol. 27, p. 3800).

Such investment *before revision* is summarized as follows:

"*Plant and Investment.*

	Total	Depreciated
Main Lines	$1138178	$1054967
Compressing Stations	239249	219294
Branch Lines and All Other Miscellaneous Property	516995	473604
Sub Total	$1894422	$1747865
Compressing Station Additions	44688	44688
Working Capital	45490	45490
Sub Total	$ 90178	$ 90178
Total	$1984600	$1838043
Investment Used By Industrial and Public Authority Customers	106952	90551
Investment Used For Total Sales For Resale	$1877648	$1747492"

(Ex. 117, Statement No. 1, Appendix.)

As hereinbefore abstracted, certain identified items in the "Calculated Total Investment Applicable to Total Sales for Resale" (Ex. 117) are eliminated therefrom as well as from Exhibit 111, Statements Nos. 1 and 2 (See Appendix) (Vol. 85, pp. 12,832-12,835). Such eliminations are reflected in Company Exhibit 245, Statement No. 2; "Revised Statement No. 1, Exhibit No. 111"; Statement No. 3, "Revised Statement No. 2, Exhibit No. 111"; and Statement No. 5, "Calculated Total Investment Applicable to Total Sales for Resale, Revised Statement No. 1, Exhibit No. 117" of said exhibit.

The result of such revisions, reflected in Exhibit 245, is summarized as follows:

"Plant and Investment."

	Total	Depreciated
Main Lines	$1057233	$ 980066
Compressor Stations	235054	216598
Branch Lines and All Other Miscellaneous Property	470163	430541
Sub Total	$1762450	$1627205
Compressor Station Additions	37477	37477
Working Capital	45490	45490
Sub Total	$ 82967	$ 82967
Total	$1845417	$1710172
Invesment Used by Industrial and Public Authority Customers	$ 98222	$ 82903
Investment Used for Total Sales for Resale	$1747195	$1627269

(Ex. 245, Statement No. 5, Appendix.)

The investment applicable to all "Sales for Resale," as depreciated in accordance with present per cent condition as found and determined from observation, inspection and examination (Ex. 107, 108, 109, 110, 111, Appendix), is the sum of $1,627,269.

(b) *Plant Investment Overheads and Working Capital—Allocation to "Sales For Resale," Cheyenne, Wyoming.*

Similarly, applying the principles and methods of allocation, applicable in this case, as hereinbefore abstracted, the "Calculated Main Line Investment Applicable to Cheyenne" which "is based on the ratio of peak-day demand in Cheyenne as compared with total peak-day use of the main line," was determined, after reflecting observed depreciation (Ex. 107, 108, 109, 110, 111, Appendix), to be $665,592.

Such investment applicable to Cheyenne *before revision* is summarized as follows:

"*Plant and Investment Applicable to Cheyenne.*"

	Total	Depreciated
Main Lines	$541,655	$500,380
General Construction Expense	26,957	24,868
Compressor Stations	128,033	116,657
Measuring Stations	2,217	2,084
Telephone Lines, Office Equipment, Automobiles, Tools	5,102	3,528
Organization Expense	1,644	1,644
Working Capital	16,401	16,401
Total	$722,009	$665,592

(Ex. 118, Statement No. 2, Appendix.)

As also hereinbefore abstracted, certain identified items in the "Calculated Main Line Investment Applicable to Cheyenne" (Ex. 118) are elminated therefrom, as well as from Exhibit 111, Statements Nos. 1 and 2 (See Appendix) (Vol. 85, pp. 12,832-12,835). Such elminations are reflected in Company Exhibit 245, Statement No. 2, "Revised Statement No. 1, Exhibit No. 111"; Statement No. 3, "Revised Statement No. 2, Exhibit No. 111"; and Statement No. 7, "Calculated Main Line Investment Applicable to Cheyenne, Revised Statement No. 2, Exhibit No. 118," of said exhibit.

The results of such revisions, reflected in Exhibit 245, are summarized as follows:

"*Plant and Investment Applicable to Cheyenne.*"

	Total	Depreciated
Main Lines	$513,685	$474,530
General Construction Expense	17,221	15,897
Compressor Stations	116,534	106,706
Measuring Stations	2,217	2,084
Telephone Lines, Office Equipment, Automobiles, Tools	4,927	3,462
Organization Expense	1,655	1,655
Working Capital	16,657	16,657
Total	$672,996	$620,991

(Ex. 245, Statement No. 7, Appendix.)

The investment applicable to "Sales for Resale, Cheyenne, Wyoming," as depreciated in accordance with present per cent condition as found and determined from observation, inspection and examination (Ex. 107, 108, 109, 110, 111, Appendix), is the sum of $620,991.

The "Estimated Investment, Arapahoe to Cheyenne to Serve Cheyenne Only" (Ex. 118, Statement No. 1, Appendix), was determined in the manner testified by Mr. Hancock, as hereinbefore abstracted. "Such estimate is predicated on actual construction and capital costs as incurred by this Company in the years 1929 to 1931" (Vol. 28, p. 3891). Such total "Estimated Investment" is $904,694, and less depreciation is $833,173 (Ex. 118, Statement No. 1).

The Trial Examiner: Mr. Hancock, does the record reflect the peak day capacity of this line in 1940 and the peak day demand of the resale customers?

The Witness: The peak day demand on January 18, 1940 was 11,646,000. On that day the peak day delivery to sale for resale customers is 10,191,000. During that day for just portions of the day there were small deliveries to certain of the industrials, but not for the entire day, which accounts for a small delivery to the industrials on that day.

In November 1940 the peak day demand was 15,817,000, which so far as I know is the highest peak ever experienced and it is my information that on that day the industrials

were all off for a substantial part of the day, as stated in regard to the Cement plant, some seven to nine hours, but that being such a recent peak the data pertaining to it has not been available in all respects.

The Trial Examiner: Now, what was your peak day capacity for the year 1940, Mr. Hancock?

The Witness: Both at the time of the January 18, 1940 peak and the November 1940 peak. I would regard the system as fully loaded at both of those times.

The Trial Examiner: So that your peak day capacity on those days approximately equalled your peak day demand?

The Witness: The peak day demand represented all of the gas that the line was capable of delivering under the operating conditions at that time.

The Trial Examiner: Well, now, the construction of this Arapahoe station—

The Witness: Yes, sir.

The Trial Examiner: —that will add some peak capacity to the line, will it not?

The Witness: Yes, sir.

The Trial Examiner: At the time that it is completed.

The Witness: Yes, sir.

The Trial Examiner: When will that be completed?

The Witness: It is now practically completed.

The Trial Examiner: Do you have any information as to—

Mr. McCreery: That is the first unit, is it not?

The Witness: The first unit is practically complete.

The Trial Examiner: What do you contemplate there? How many units?

The Witness: There is now one 600-horsepower unit and it is contemplated that in 1941 another 600-horsepower unit will be added.

The Trial Examiner: Well, have you made any calculation as to what your peak day capacity might be subsequent to the installation of those two units in the Arapahoe station?

The Witness: Yes, sir. After the second 600-horsepower unit is installed, making a total of twelve hundred horsepower installed, and based on 50-pound intake pressure which is the minimum pressure specified in the purchase contract, and with 175 pounds discharge from that station, the station will have a capacity of 15,100,000.

The Trial Examiner: Well, now, let's see. Where is the location of that station?

The Witness: That is practically at the beginning of the Colorado-Wyoming Gas Company line south of Denver.

(Vol. 28, pp. 3857-3859.)

* * * * *

IV. Commission Allocation of Cost of Service

(Commission Ex. 227.)

William H. Lyon, a witness on behalf of the Commission, testified on the subject of "Allocation of Cost of Service."

The witness testified:

Q. Will you state your name, please?
A. William H. Lyon.
Q. What is your professional occupation, Mr. Lyon?
A. Senior gas Engineer in the Division of Gas Engineering of the Federal Power Commission.
Q. How long have you been so employed?
A. Since December 1938.
Q. In connection with that employment I will ask you, Mr. Lyon, whether you have previously been engaged in similar occupations?
A. I have been a gas engineer for a natural gas company.
Q. Have you prepared a statement showing your qualifications in that particular character of work?
A. I have.
Q. Will you proceed to read that, please?
A. Formal Education: Completed grade and high

schools in Mississippi. Attended the Mississippi State College in the School of Engineering and graduated in 1929 with the degree of Bachelor of Science with Honors in Mechanical Engineering. Graduate of the LaSalle Extension University correspondence course in Higher Accountancy in 1931. Also completed a special post graduate coaching course in Public Utility Accounting Problems offered by correspondence by the LaSalle Extension University.

Experience in Natural Gas Industry: Immediately upon graduating from college in 1929, I entered the employ of the Arkansas Natural Gas Corporation as Cadet or Junior Engineer, at Shreveport, Louisiana, taking the Cadet Engineering Training Course offered by that Company. During the training period I was assigned to the operating departments of various subsidiary companies of that Company, and was engaged in an intensive training course involving all of the branches of business conducted by the group of companies.

The principal business of those companies has been the production, transportation and distribution of natural gas, and the production, transportation, refining and marketing of petroleum and its products in the States of Arkansas, Louisiana and Texas. The group of companies owned oil and gas producing properties, oil pipe line systems, gas pipe lines, oil refineries, gasoline extraction plants, natural gas distribution systems and marketing of gasoline and other petroleum products. This training course covered the major portion of these properties either directly or through association with others.

Upon leaving this training course I was assigned to the general offices of the company in Shreveport, Louisiana, as an engineering assistant to one of the executive officers of the corporation. Subsequent to this, the company placed me in the general office Rate and Valuation Department as Valuation and Rate Engineer for the group of companies. The number of employees under my supervision in the office varied with the amount of work in progress, but in latter years generally ranged from 10 to 15 persons. During my employment in this capacity it was a part of my duties to prepare numerous engineering studies and reports covering the operations and property of the following companies:

Arkansas Natural Gas Corporation
Arkansas Louisiana Gas Company
Arkansas Fuel Company
Arkansas Pipeline Corporation
Arkansas Louisiana Pipeline Company
Reserve Natural Gas Company of Louisiana
Southern Cities Distributing Company
Public Utilities Corporation of Arkansas
Little Rock Gas & Fuel Company
Bethany Oil & Gas Company
Natural Gas & Fuel Corporation
Louisiana Oil Corporation
Louisiana Oil Refining Corporation.

These duties also included the preparation of inventories and appraisals of oil and gas producing properties, oil pipe-line systems, gas pipe-line systems, oil refineries, natural gasoline extraction plants, propane and butane extraction plants, wholesale and retail gasoline and petroleum marketing facilities, gasoline filling stations, bulk stations, natural gas distributing systems, and similar properties.

During this time I also prepared estimates of the cost of construction of natural gas property and upon completion of the construction made comparisons of the estimates with the actual expenditures. I have prepared detail analyses of costs of construction of some fifteen hundred miles of natural gas and oil pipelines of diameters from 2" to 20" and a number of oil pipe-line pump stations and natural gas compressing stations.

During the period of my employment by the Arkansas Natural Gas Corporation or subsidiary companies, the group of companies expended upwards of forty million dollars for construction purposes, all of which I was in some respect concerned with, for the work previously mentioned was related to the operations of all of the companies. During the construction of the Stuttgart Arkansas gas distribu-

tion plant in 1929, I acted as an assistant to the superintendent of construction and was in direct and active charge of the material records, time-keeping, and payrolls for the construction crew of approximately 150 men. I assisted in the field work in connection with a survey of a natural gas distribution plant for the purpose of determining the amount of leakage and unaccounted for gas and prepared reports indicating the cost of reducing leakage and determined the savings resulting therefrom. While in the Rate and Valuation Department of the companies, my duties also included the preparation of depletion, *drpreciation* and amortization studies of natural gas production, transmission and distribution property. I also prepared engineering studies relative to the service life of natural gas property, the causes of removal of natural gas property from service and compiled data relative to the rates of replacement of natural gas pipe lines due to physical deterioration and other causes. During 1936 and 1937 I initiated and directed the preparation of engineering studies for the purpose of determining the necessary annual accruals for depletion, depreciation and amortization of the property of the group of companies previously mentioned and, together with independent engineers retained by the company, made recommendations to the management thereupon. The property involved in this study was in excess of 100 million dollars. During 1935 I was responsible for the compilation of engineering reports submitted by an oil pipe-line subsidiary, for filing with the Interstate Commerce Commission under that Commission's Depreciation Order.

As rate engineer for the Arkansas Natural Gas Corporation and its subsidiary companies, it was my responsibility to prepare engineering reports in connection with the formulation of natural gas rates and rate structures of the group of companies. For this purpose, I prepared statistical analyses of the frequency and distribution of various sizes of gas bills and of the annual and monthly gas consumption per customer for various classes of customers in a number of gas plants. I prepared reports of the characteristics of various types of gas loads involving study of the relation of temperature or degree day deficiency to space heating loads, made analyses of coincidental demands on gas pipeline systems, studies of diversity factors and

load factors both on pipe-line systems and distribution plants.

I have prepared complete studies of the cost of rendering gas service including allocation studies necessary in determining the cost of service to individual customers. Such studies involved determination and detailing of incremental costs, determination of average system costs, limits of common cost zones, the study of the causes and source of the costs and bases for allocating the costs to various classes and kinds of gas service. One of these studies was presented in the Federal District Court for the Western District of Arkansas on behalf of the Arkansas Louisiana Gas Company in a natural gas rate litigation involving the City of Texarkana, Arkansas. The method of allocation presented was used by the special master hearing the case, was followed by the Judge in the Federal District Court, and was upheld in the Court of Appeals and in the United States Supreme Court.

Recent rate changes involving the installation of promotional type gas rates in some 18 cities and communities in the State of Arkansas, including the Cities of Little Rock and Pine Bluff, Arkansas, were the result of studies made by me in cooperation with the Department of Public Utilities for the State of Arkansas.

It has been a part of my duties to appear before regulatory bodies in connection with investigations being made into the operations of the companies with which I was connected, and attend hearings and present engineering evidence for the purpose of establishing natural gas rates. I have also appeared before representatives of the Bureau of Valuation of the Interstate Commerce Commission in connection with the determination by that Commission of the valuation of an oil pipe-line system of one of the companies.

I have also appeared in the Federal Court of the Western District of Louisiana in a case involving the determination of the fair value of industrial property.

During the course of my employment with this group of companies, there was initiated under my direction a sys-

tem of continuous engineering property records for the natural gas property of the companies, the total property for which the records were established being approximately 50 million dollars.

In 1935-1936 I prepared special engineering reports for the use of the management in connection with the reorganization of the Louisiana Oil Refining Company under Section 77-B of the Bankruptcy Act.

I entered the employ of the Federal Power Commission in 1938 as Senior Gas Engineer soon after the passing of the Natural Gas Act and have been continuously thus employed since that time. A part of my duties consist of engineering studies and investigations of the operations of a number of natural gas companies. Reference to the Dockets which have been set by the Commission indicates the scope of this work since that time.

As Senior Engineer in the Washington office of the Commission, it has been my additional responsibility to act in the place of the Chief of the Division of Gas Engineering of the Commission, who directs the work of all of the gas engineers in the employ of the Commission, during his absence. These general responsibilities have widened the field of my duties, necessitating some measure of familiarity with the operations of practically every interstate natural gas pipeline company under the jurisdiction of the Commission."

Q. Have you completed the reading of your written statement of qualifications, Mr. Lyon?

A. I have.

Q. You stated that you are presently employed by the Federal Power Commission as a gas engineer?

A. That is correct.

Q. In connection with that employment, have you had occasion to prepare and did you prepare any study or exhibits on the subject of cost of service in connection with this present proceeding?

A. Yes, I have.

Q. I will ask you whether this is the exhibit that you prepared?

A. That is correct.

Mr. Lange: Mr. Examiner, this exhibit has an appendix. I think it might be practical to, in the same fashion that this appendix be an "A" number of the exhibit.

The Trial Examiner: Very well, Mr. Lange. Did you state the title of the document?

Mr. Lange: "Allocation of cost of Service for the Year 1939, Canadian River Gas Company and Colorado Interstate Gas Company."

Will the reporter please mark the exhibit for identification?

The Trial Examiner: It will be marked for indentification as Exhibit 226.

(Exhibit 226, Witness Lyon, marked for indentification.)

The Trial Examiner: And the appendage thereto?

Mr. Lange: The index will be 226-A, the appendage.

The Trial Examiner: Is that an index or is it an appendix?

Mr. Lange: It is an appendix.

The Trial Examiner: It will be marked for indentification as Exhibit 226-A.

(Exhibit 226-A, Witness Lyon, marked for indentification.)

By Mr. Lange:

Q. Mr. Lyon, did you in connection with the preparation of that exhibit also prepare a written statement describing the nature and contents of the exhibit?

A. I have.

Q. Will you please read that written statement into the record?

(Vol. 74, pp. 10930-10940.)

* * * * *

The Witness: "This exhibit entitled "Canadian River Gas Cmpany and Colorado Interstate Gas Company, Allocation of Cost of Service, Year 1939" has been compiled and is presented to show the cost to the Canadian River

Gas Company and Colorado Interstate Gas Company, combined, of supplying natural gas to its customers, and to determine by allocation and apportionment the amount of the total aggregate costs experienced by these two companies during the year 1939, attributable to the gas service rendered to each of the groups served from these same facilities. The necessity for an exhibit such as this arises by reason of the fact that the several customers of these companies jointly use the same gas plant and depend for gas service upon the same pipeline facilities and gas supply.

Table 1, entitled "Summary of Cost of Service and Comparison with Revenues," reflects in columns 3 to 10, inclusive, the total cost of service ($3,406,857.99) as summarized in Table 4 as to the customer or groups of customers designated (column 1), at the several delivery points (column 2), and shows in column 11 the adjusted operating revenues (total $6,036,276.35) received, as to each customer, and credits for gas utilized in operations, on deliveries of gas during the year 1939.

Amounts in column 3 represent the allocation of cost for all gas produced at well heads, the description of the total cost ($1,051,721.34) being shown in Table 5. In this latter table is developed the unit cost per mcf of $0.02196 (actually $0.021956777) on 47,899,622 mcf of gas produced and made available for sale during 1939. The amounts in Table 1, column 3, relating to the respective customers or groups of customers are derived by multiplying the deliveries in mcf as shown in Table 2, column 6, by the unit cost ($0.021956777) per mcf developed in Table 5.

Amounts in Table 1, column 4, represent the cost of production system gathering of gas, the description of the cost ($170,628.03) being shown in Table 6. In this latter table is developed the unit cost per mcf of $.00396 (actually $.003959818) on 43,089,864 mcf of gas gathered, which excludes 4,809,758 mcf of gas of the total gas produced, covering direct well head deliveries to Amarillo Oil Company. The amounts in Table 1, column 4, relating to the respective customers or groups of customers are derived by multiplying the deliveries in mcf as shown in Table 2, column 6,

excluding deliveries to Amarillo Oil Company, by the unit cost ($.003959818) per mcf developed in Table 6.

Amounts in Table 1, column 5, represent the results from production system residuals refining (gasoline extraction) operations, effecting a credit of $169,144.37 to cost of service, as detailed in Table 7, $118,508.69 and $15,056.24 of the total credit amount shown in Table 1, column 6, are direct allocations to Natural Gas Pipeline Company of America (line 53) and Amarillo Oil Company (line 55) respectively; these amounts relate exclusively to these customers. The remainder of the total credit amount ($35,579.44) is allocated in Table 1, column 5, solely to customers on the Denver Line, lines 1 to 50 inclusive, by multiplying the deliveries in mcf as shown in Table 2, column 6, lines 1 to 51 inclusive, by the unit cost, $.00163 (actually $.0016299207) per mcf developed in Table 7, line 23.

Amounts in Table 1, columns 6, 7 and 8, constitute the cost of gas transmission totaling $2,265,650.63, the details of which are contained in Table 8. The amounts in Table 8 are further separated to show those costs allocable on the basis of: (1) mcf sales deliveries shown in column 4, "Volumetric Costs," (2) maximum daily deliveries shown in column 5, and (3) rental of leased facilities shown in column 6.

Amounts in Table 1, column 6, totaling $673,427.50, related to the respective customers, are derived by multiplying the sales deliveries in mcf as shown in Table 2, column 6, by the unit cost, $.030850 (actually $.03085021676) per mcf, developed in Table 8.

Amounts in Table 1, column 7, totaling $611,641.80, related to the respective customers, are derived first by application of the percent (44.917%) developed in Table 2, column 7, line 51, to the total ($1,361,715.60) shown in Table 8, column 5, line 30, the product being $611,641.80, the transmission cost of service allocable to customers on the basis of system maximum day deliveries. Secondly, the unit cost per mcf involved in this allocation amounts to $14.33423482, obtained upon division of the total cost of service, $611,641.80, by the total, 42,670 mcf, shown in Table 2, column 7,

line 51. The unit cost thus developed was applied to the mcf system maximum daily delivery shown for each of the customers in Table 2, column 7, lines 11 to 45 inclusive, to obtain the amounts shown in Table 1, column 7, lines 10 to 44 inclusive.

Amounts in Table 1, column 8, totaling $750,073.80, related to the respective customers, are derived first by application of the percent (55.083%) developed in Table 2, column 8, line 51, to the total ($1,361,715.60) shown in Table 8, column 5, line 30, the product being $750,073.80, the transmission cost of service allocable to industrial customers on the basis of individual maximum day deliveries. Secondly the unit cost per mcf involved in this allocation amounts to $10.62171715, obtained by division of the total cost of service, $750,073.80, by the total 70,617 mcf, shown in Table 2, column 10, line 51. The unit cost thus developed was applied to the mcf individual *maxumum* daily delivery shown for each of the customers in Table 2, column 10, lines 9 to 45 inclusive, to obtain the amounts shown in Table 1, column 8, lines 1 to 44 inclusive.

In Table 1, line 53, between columns 7 and 8, is shown the amount of $230,507.53, described in Table 8, column 6, line 7, as the joint expenses rental of leased facilities. This entire amount is applicable to deliveries to Natural Gas Pipeline Company of America.

Amounts in Table 1, column 9, represent the cost of distribution, totaling $88,002.36, the details of which are contained in Table 9. The amounts in Table 9 are further separated to show first those costs allocable equally per customer in column 4, and secondly those costs allocable upon the ratio of adjusted book cost of plant at December 31, 1939, in column 5; while the second page of Table 9 shows the proportionate allocations in columns 4 and 5 to the respective locations of service and reflected accordingly in Table 1, column 9.

Amounts in Table 1, column 10, are the totals of respective amounts in columns 3 to 9 inclusive, the sources of which have been explained in the preceding paragraphs."

By Mr. Lange:

Q. Mr. Lyon, have you completed the reading of your written statement in connection with that exhibit?

A. I have.

Q. Mr. Lyon, did you in connection with your assignment in this particular proceeding prepare another exhibit on allocation of cost of service in connection with the Colorado-Wyoming Gas Company?

A. I have.

Q. Is this the exhibit I now show you?

A. That is correct.

Mr. Lange: Will the reporter please mark that for identification?

The Trial Examiner: It will be marked for indentification as Exhibit 227.

(Exhibit 227, Witness Lyon, marked for identification.)

Mr. Spencer: There is no appendix to this one?

Mr. Lange: No appendix to this one, Mr Spencer.

Q. Mr. Lyon, in connection with this particular exhibit, did you also prepare a written statement explaining its contents?

A. I did.

Q. Will you please read that statement into the record?

A. "This exhibit entitled "Colorado-Wyoming Gas Company, Allocation of Cost of Service, Year 1939" has been compiled and is presented to show the cost to the Colorado-Wyoming Gas Company of supplying natural gas to its customers, after adjusting the cost of gas purchased from the Colorado Interstate Gas Company to that determined in the previous exhibit No. 226, entitled "Canadian River Gas Company and Colorado Interstate Gas Company, Allocation of Cost of Service, Year 1939." This exhibit also determines by allocation and apportionment the amount of such total costs during the year 1939 attributable to the gas service rendered to each of the groups that were served from its facilities. The necessity for an exhibit such as this arises by reason of the fact that the several customers of this company jointly use the same gas plant and depend

for gas service upon the same pipeline facilities and gas supply.

Table 1, entitled "Summary of Cost of Service and Comparison with Revenues," reflects in columns 3 to 10 inclusive, the total cost of service ($599,153.84) summarized in Table 4, as to the customer or groups of customers designated (column 1), at the several delivery points (column 2), and shows in column 11 the adjusted operating revenues (total $828,941.30) received, as to each customer, on deliveries of gas during the year 1939.

Amounts in Table 1, columns 3 to 5 inclusive, represent the allocation of the cost for all gas purchased for resale, a total amount of $358,385.63, as detailed in Table 5. In Table 1, the total of column 3 is $158,847.03, as shown in the "Recapitulation of Cost," in Table 5; and this amount has been allocated to customers and groups of customers by application of the unit cost per mcf $158,847.03 ÷ 2,839,717 = $.0559376268) to the respective mcf sales deliveries of gas shown in Table 2, column 6.

In Table 1, the total of column 4, $107,540.98, is *detained* in Table 5, as $106,532.03 on line 5, plus 53.89% of $1,872.24 on line 8 ($1,008.95). The sum thereof has been allocated to customers and groups of customers by application of the unit cost per mcf ($107,540.98 ÷ 7014 = 15.3323324) to the respective mcf maximum day deliveries of gas shown in Table 2, column 7.

In Table 1 the total of column 5 is $91,997.62, as detailed in Table 5, $91,134.33 on line 6 plus 46.11% of $1,872.24 on line 8 ($863.29); which sum has been allocated to customers or groups of customers by application of the unit cost per mcf ($91,997.62 ÷ 10,512 = $8.75167179) to the respective mcf individual maximum day deliveries shown in Table 2, column 11.

In Table 1 the total of column 6, $70,599.44, volumetric transmission cost of service, as detailed in Table 6, column 4, has been allocated to customers and groups of customers by application of the unit cost per mcf shown in the latter table, $.024861 (actually $.02386143513) to the respective mcf sales deliveries of gas shown in Table 2, column 6.

In Table 1 the total of columns 7 and 8 is $149,920.91, being the capacity transmission cost of service, as detailed in Table 6, column 5. The total of column 7 in Table 1, $75,201.83, represents 50.161% of $149,920.91, using the ratio shown at the bottom of column 7 in Table 2, and was allocated to customers and groups of customers by application of the unit cost per mcf (75,201.83 ÷ 7,014 = $10.72167522) to the maximum day deliveries shown in Table 2, column 7. The total of column 8 in Table 1, $74,719.08, represents 49.839% of $149,920.91, using the ratio shown at the bottom of column 10 in Table 2, and was allocated to customers and groups of customers by application of the unit cost per mcf ($74,719.08 ÷ 10,512 = $7.107979452) to the respective individual maximum day deliveries shown in Table 2, column 11.

In Table 1 the total of column 9, $20,247.86, is the distribution cost of service as detailed in Table 7, first page; whereas the second page of this statement shows the allocation to customers.

The amounts shown in Table 1, column 10, are totals of the respective amounts in columns 3 to 9 inclusive, the total of which is $599,153.84, the aggregate cost of service, set forth in Table 4."

Q. Have you completed the reading of your written statement in connection with this exhibit, Mr. Lyon?

A. I have.

Q. Now, Mr. Lyon, in connection with your cost of service study that you have prepared and particularly with reference to the previously named and numbered exhibits, 226 and 227, I will ask you whether you have prepared a summary of such cost of service for the years 1937, 1938 and 1939 as applying to Canadian River Gas Company, Colorado Interstate Gas Company, as well as Colorado-Wyoming Gas Company?

A. Yes, I have.

Q. As I understand it, this summary that you have so prepared is not an essential part nor is it necessary to the consideration of the aforementioned two exhibits, 226 and 227?

A. That is correct, it is not essential?

Q. And it was prepared by you primarily for the purpose of giving a spread over the three years named?

A. That is correct.

Q. And will you indicate briefly what your purpose was in preparing such summary?

A. There is included in this exhibit two parts. The first part applies to the combined Canadian River Gas Company and Colorado Interstate Gas Company. The second part applies to the Colorado-Wyoming Gas Company. The two parts are wholly separate.

Q. And included in the instrument purely for mechanical purposes for brevity, but they do not necessarily appear in a combined instrument?

A. That is correct.

Q. Now, is there any other statement you wish to make with reference to that?

A. The first page in this exhibit is entitled "Written Statement."

Q. Will you please read that into the record?

A. "This exhibit has been compiled and is represented to show for the consolidated Canadian River Gas Company and Colorado Interstate Gas Company System and for the Colorado-Wyoming Gas Company System the total cost of service of each functional division determined in the same manner as was done in other exhibits for the single year 1939."

Q. Now, the two exhibits you are referring to are Exhibits 226 and 227?

A. That is correct.

Mr. Lange: I have overlooked. I want this instrument identified by the reporter.

The Trial Examiner: It will be marked for indentification as Exhibit 228.

(Exhibit 228, Witness Lyon, marked for identification.)

By Mr. Lange:

Q. This is the summary exhibit that I am now showing you that has just been identified by the stenographer as Exhibit 228?

A. That is correct.

Q. Now, if you will complete the reading of that written statement appearing on the title page, Mr. Lyon.

A. "This exhibit is presented for the purpose of showing the fact that the unit costs, resulting from the operations of these companies for the year 1939, also approximate the average for the three years 1937, 1938, and 1939. The following tabulation shows in summary form a comparison of costs determined from the operations of these companies for the year 1939, as compared with similar costs for the three-year period:

"Canadian River Gas Company and Colorado Interstate Gas Company

	Average for Years 1937, 1938, 1939	Year 1939
Cost of Gas at the Wellhead	.02124	$ .02196
Cost of Production System Gathering	.00396	.00396
Cost of Residuals Refining (Amarillo Oil Co.)	(.0632)	(.0031)
Cost of Residuals Refining (Denver Line)	(.0015)	(.0016)
Cost of Residuals Refining (Chicago Line)	(.0054)	(.0057)
Cost of Transmission—Volumetric Costs	.031522	.03085
Cost of Transmission—Capacity Costs	1,313,903.39	1,361,715.60
Rental of Leased Facilities—Cost	220,337.34	230,507.53
Cost of Distribution	85,608.05	88,002.36

"Colorado-Wyoming Gas Company

	Average for Years 1937, 1938, 1939	Year 1939
Cost of Transmission— Volumetric costs	.026553	$ .024861
Cost of Transmission— Capacity Costs	154,249.97	149,920.91
Cost of Distribution	18,157.87	20,247.86

"All statements made in connection with the preceding exhibits, relating to the year 1939 as to methods of compilation, sources of information, and allocations, apply with equal force to the tables in this exhibit."

Q. That completes the written statement on the title page of the exhibit, Mr. Lyon?

A. That is correct.

Q. I have one question to ask you with reference to Exhibit 227. Turn to Exhibit 227, Table 5, Mr. Lyon, the page entitled "Colorado-Wyoming Gas Company, Summary of Cost of Gas Purchased for Resale, for the year 1939." In what sense do you use the word "resale" on that table, as well as anywhere else in the exhibit?

A. The use of the words "gas purchased for resale" means all of the gas purchased by this company for resale, regardless of whether it is direct to customers or to distribution plants for redistribution and resale.

Q. Now, are there any other explanations that you have to make in connection with any one of these exhibits, Mr. Lyon, at this time?

Mr. Spencer: I would prefer, if agreeable to Mr. Lyon, to let him check up and see if he has any further explanations and then make them in advance of our cross examination.

Mr. Lange: Very well, that will be agreeable.

Mr. Spencer: I will probably not handle the—

Mr. Lange: That will be all for the present, Mr. Examiner, of this witness.

Mr. Spencer: Mr. Lyon, may I ask you this: My question is about to show my ignorance.

In connection with Exhibit 225 and Exhibit 225-A, are they complete in themselves?

The Trial Examiner: 226, I believe.

Mr. Spencer: 225 and 225-A.

The Trial Examiner: Those are Mr. Knapp's exhibit.

Mr. Spencer: I beg your pardon—226 and 226-A. Are they complete in themselves, or do you have working papers in connection with them?

The Witness: There are working papers in connection with Exhibit 226 and 226-A. The source of the figures in Exhibit 226-A are in the same working papers.

Mr. Spencer: And you have those available?

The Witness: They are, yes, sir.

Mr. Lange: They will be made available to you, Mr. Spencer, at any time that you advise us.

Mr. Spencer: Now, the same question with respect to Exhibit No. 227.

The Witness: Yes, there are working papers supporting that exhibit.

Mr. Spencer: And I will ask the same question with respect to Exhibit 228. I guess perhaps there aren't, or do you have working papers in connection with Exhibit 228?

The Witness: There are working papers and they are in the same file as the working papers for the two previous exhibits.

(Vol. 74, pp. 10941-10955.)

Commission Exhibit 226 (Appendix this Record).

Commission Exhibit 227 (Appendix this Record).

Commission Exhibit 228 (Appendix this Record).

On cross-examination the witness testified:

The amounts shown in Exhibit 227 for operating expenses, depreciation, depletion, taxes, non-recurring expenses, exploration and development costs and working capital, were all secured from exhibits introduced in this case by the Commission. Such exhibits were identified as Exhibit 199, "Plant Account" by Vaught; Exhibit 200, "Composite Service Lives" by Copp; Exhibit 201, "Annual and Accrued Depreciation" by Smith; Exhibit 202, "Income Accounts" by Smith; and Exhibit 203, "Working Capital" by Smith. (Vol. 81, pp. 12,049, 12,050.)

In addition to the adjusted expenses determined by the examiners of the Commission, Exhibit 227 includes, as an element of cost service, an amount calculated at 6% on the average net adjusted book cost of these plants in service during the year 1939, and on the working capital. (Vol. 81, p. 12,051.)

With respect to peak-day demands the witness was forced to admit:

"Q. • • • I asked you if you knew of the various peak day demands upon the Colorado-Wyoming Gas Company's system during the last three years by days. All that is reflected in Exhibit No. 227 is a peak delivery as I understand it of Colorado Interstate Gas Company out of its system. It doesn't have anything to do with the peak day demand upon the Colorado-Wyoming Gas Company's system.

"Q. I think I have all of the demand figures to which you refer.

• • • • • •

"Q. What was the peak day demand on the system's delivery by Colorado-Wyoming Gas Company on December 26, 1938?

"A. I will answer that subject to the fact that these are working papers and I must state that these deliveries were not used in this exhibit and I have not had occasion to convert these deliveries to the uniform pressure base of measurement followed by the exhibit, but the volumes are on a contract pressure base.

"Q. They didn't enter into your study in any degree as reflected in Exhibit No. 227?

"A. In so far as the determination of the coincidental demands, no.

"Q. Did they otherwise enter into your consideration?

"A. They may have with respect to the individual industries.

"Q. Did they or did they not?

"A. I will have to check and see."

(Vol. 81, pp. 12,053-12,055.)

"*Mr. McCreery:* • • • I asked you if these peak day deliveries beginning with the peak day delivery of 12-26-38 as a peak day delivery entered into your study or into your exhibit.

• • • • •

"*The Witness:* May I ask for an explanation of whether you meant the peak day in the total or in detail?

"Q. I said the peak day in total as such.

"A. I am sorry, but I misunderstood you. The peak day in total does not:

"Q. What was that peak day delivery from the Colorado-Wyoming's system?

"A. Subject to the same statement I made that this volume is not accurate by reason of not having been translated to a uniform pressure base, the amount is 15244.

• • • • •

"A. Yes, and that is on December 26, 1938.

"Q. What was the delivery by that company on February 9, 1939?

"A. Upon the same basis as the previous figure, the volume is 12,672 Mcf.

"Q. Now, on January 18, 1940—

"A. I am sorry, I don't have that figure.

"Q. Do you have any figure in 1940?

"A. Not as a part of this exhibit, no.

"Q. Do you have them? I don't care whether they are part of the exhibit or not.

"A. I have requested that, an engineer to do that, but at this time of the hearing I don't have them.

"Q. So the peak delivery of December 26, 1938 was

substantially larger than the delivery on February 9, 1939?

"A. I don't say substantially larger, it was larger.

"Q. It is the difference between 12,672 and 15,244 Mcf?"

(Vol. 81, pp. 12,057, 12,058.)

"Q. Mr. Lyon, the difference between the deliveries by the Colorado-Wyoming Gas Company system on December 26, 1938 which was according to your figures, 15,244 Mcf, and the deliveries on February 9, 1939, which again according to your figures were 12,672, computed, amounted to a little over 20 per cent difference, does it not?

* * * * *

"A. Approximately, I believe it would be."

(Vol. 81, p. 12,070.)

In Exhibit 227 the witness used the "Maximum day deliveries on Colorado Interstate Gas Co. Peak Day—Thurs. Feb. 9, 1939" (Exhibit 227, Table 2). The same day, he declared, was used for Colorado-Wyoming Company, and Colorado Interstate Company, for the reason that the witness believed it represented the maximum domestic and commercial demand of both systems as a whole (Vol. 81, p. 12,106). He also testified:

"If the peak of the domestic and commercial load occurred other than as I have used it, I think that that coincidental commercial and domestic peak would be a reasonable base to use, but that peak must be recurring, * * *"

(Vol. 81, p. 12,101.)

"Q. Now, Mr. Lyon, do you know whether or not all of the industrial contracts entered into by Colorado-Wyoming Gas Company carry a shut-off provision so that if sufficient gas is not available to supply the demand made upon the company the industrial contracts are shut off in whole or in part so as to afford a supply to those having prior rights, the domestic consumers?

"A. I believe that clause as you state it is substantially in all of the contracts. I have not examined the contracts for the sale or distribution—

"Q. Do you know whether or not a similar provision is contained in the franchises under which gas sold by Colorado-Wyoming Gas Company is served various communities by Public Service Company of Colorado? Do you know that?

"A. I haven't examined the franchises.

"Q. So you do not know that?

"A. No.

• • • • •

"*The Witness:* As I understood the question, I will ask you this: Do you mean that the rights for gas service for the Colorado-Wyoming Gas Company on the facilities of the Colorado Interstate Gas Company are subordinate to the rights of the city of Denver?

"*Mr. McCreery:* Yes.

• • • • •

"A. I know that the subordination of one contract or class of service is related to another and that the Colorado-Wyoming Gas Company's contract has some peculiarities, but I am not able to recall right now exactly the wording of that.

"Q. Do you understand or know whether or not the supply of gas to Colorado-Wyoming Gas Company is also subordinate to the supply of gas for the city of Pueblo?

"A. I believe I recall that provision, yes.

"Q. Did the fact this shut-off provision was in all of the industrial contracts, in the terms of these franchises, if any of the franchises have terms, and of these various contracts enter into your study or Exhibit No. 227?

"A. No, except in the statement that I made with reference to the shut-off clause.

"Q. There is no effect given to them in the determination of this exhibit?

"A. No.

"Q. Nor in any of the elements in your exhibit, is that true? It doesn't enter into your exhibit at all?

"A. The determinations in that exhibit, that is correct."

(Vol. 81, pp. 12,058-12,061.)

As to deliveries on February 9, 1939, witness stated he

did not know whether for a portion of that day deliveries of gas were limited strictly to domestic customers, although he did know that service was restricted to the industrial customers. (Vol. 81, pp. 12,068-12,069.)

"Cost" as used by the witness in Exhibit 227 is as determined and set out in Commission's Exhibits 199, 200, 201, 202 and 203, and includes cost of purchased gas, operating expenses, maintenance, depreciation, taxes and an "amount of return determined at 6 per cent." (Vol. 81, pp. 12,071, 12,072.)

The cross-examination was continued as follows:

"Q. And in cost you include these items that we have discussed. Now, I observe, referring to Exhibit 227, that the difference between $828,941.30 in Column 11 and the item of $599,153.84 in Column 10 of Table 1 is the sum of $139,717.41 which appears to be the amount that you feel we are paying in excess of what we should pay for gas and the sum of $90,070.05 which is the amount of supposed excess earnings which Mr. Smith in his Exhibit 202 sets up, being in excess of the 6 per cent return, is that true?

"A. No.

"Q. That is just a coincidence, is it?

"A. No. I have not determined what you should pay for gas at the Arapahoe station. I have determined what it is costing the Colorado Interstate Gas Company to deliver that gas including as an element of cost 6 per cent of the net adjusted book cost of the plant, and I have not—

"Q. We won't argue about it. Now, that is the cost—that is what our cost really should be, is it?

"A. No, I don't say what it should be. I say that is what the cost is.

"Q. That is what the cost is; so that the cost of our gas is $139,717.41 less than we are paying for it, is that it?

"A. The cost including a return of 6 per cent.

"Q. Yes, that's right. It is that amount less. Now, that particular figure happens to be found in the Colorado Interstate exhibits, does it not, offered by the Commission?

"A. The $358,385.63.

"Q. No. The apportionment down to $139,717.41. I will refer you to Table 4 of Exhibit 227. At the bottom of the page where you show the purchase price actually paid for the gas at $498,103.04, and you have adjusted the price we should pay down to $358,385.63, and the difference is $139,717.41. Now, is that the amount that we have been paying in excess of what the gas cost us under your definition of cost?

"A. Yes.

"Q. All right. Now, then, after you have substracted from the $828,941.30 the sum of $139,717.41, you have left 689,223.89, have you not?

"A. I don't follow those figures.

"Q. You have followed as far as $139,717.41, didn't you?

"A. No, sir. That is the difference between the cost—yes.

"Q. Now, applying that figure by subtraction from the total in Line 40, Column 11, Table No. 1 of Exhibit 226, what do you get?

"A. I believe my figures are correct—$689,223.89.

"Q. Now, your figure in Line 40, Column 10, Table 1, Exhibit 226, is what?

"A. $599,153.84.

"Q. That represents, under your definition, the cost of gas to us including a return, does it not?

"A. It represents your cost of service.

"Q. Including a return.

"A. That is right.

"Q. On plant.

"A. On the net adjusted book cost.

"Q. Will you get the difference between the figure $689,223.89 and your $599,153.84?

"A. $90,070.05.

"Q. Now, is that not the figure that comes from Page 10 of Exhibit No. 202 of Mr. Smith after you have subtracted from his figure a 6 per cent return on the investment he sets up on that page?

"A. I will have to check those references.

"Q. Or substantially that figure.

"A. I would have to make that calculation. The basis

which I have for determining the return is the same as the—no.

"Q. Well, you make the calculation for the year 1939.

"A. That is substantially correct. The figure which Mr. Smith sets up on Line 8 is $167,902.75, and 6 per cent on the total average investment, Line 7, in the same Column, is $77,626.54. The difference between those figures is $90,276.21 which is approximately the same as the amount of $90,070.05.

"Q. Now, isn't that difference completely reconciled in the way in which you compute your return on Table 4?

"A. The difference is due entirely to the fact that in determining the average balance in contributions in aid of construction, I have used a 3-year average whereas Mr. Smith uses the single year.

"Q. So that makes its entire identity with that change?

"A. That's right.

"Q. So as a matter of fact, Mr. Lyon, you had your answer before you started this exhibit, didn't you?

"A. You mean mathematical relationship between these two figures?

"Q. You had your cost figure before you started to make this exhibit or before you started to make this study.

"A. The total cost of service was taken from the accountants' exhibit with the exception of return.

"Q. There is no determination of cost in this exhibit whatever, is there? This is simply a readjustment of figures in the way in which you happen to have made them, is it not?

"A. I have taken the accountant's figures as representing cost. I have no redetermined costs.

"Q. Did you not start with $599,153.84 at the beginning of your study in this exhibit?

"A. That is correct.

"Q. And then you worked backwards from that figure to whatever else is in this exhibit.

"A. I allocated—that is correct.

"Q. Well, now, how many times did you work out formulas before you got to a formula that would fit that cost?

"A. That is not a formula. That is very simple.

"Q. Well, I could agree with you but I would define it differently than you do.

"A. It is a summation of the total costs as reflected in accounting Examiner's exhibits brought forward into this exhibit and an added amount for return incorporated and the resulting total cost is reflected in this exhibit."

(Vol. 81, pp. 12,079-12,083.)

It was stated by the witness on cross-examination that in Exhibit 226, Table 2, Columns 7, 8 and 9, under heading "Coincident System Maximum Day Delivery, Thursday, Feb. 9, 1939" of Colorado Interstate Company, the apportionment of capacity in percentages was "Domestic, Commercial, Lost Gas" 44.917% and "Industrial" 55.083%—and that had the same formula been used in Exhibit 227 with respect to Colorado-Wyoming Company, the apportionment of capacity would have been "Domestic, Commercial and Lost Gas" 65.3% and "Industrial" 34.7% (Ex. 227, Table 2, Columns 7, 8 and 9, Vol. 81, p. 12,086) instead of "Domestic, Commercial and Lost Gas" 50.161% and "Industrial" 49.839% actually used by him in Exhibit 227, Table 2. (Vol. 81, pp. 12,083-12,087.)

The formula used in Exhibit 226 is the per cent ratios of "Domestic, Commercial and Lost Gas" and "Industrial" to the total "Coincident System (Colorado Interstate Company) Maximum Day Delivery, Thursday, Feb. 9, 1939" (Ex. 226, Table 2, Columns 7, 8, 9).

The witness testified that, the figures under the heading "Coincidental System Maximum Day Delivery, February 9, 1939," in Exhibit 226, Table 2, Columns 7 and 8 for the most part, and, therefore, also in Column 9, are averages and estimates, not actual or maximum (Vol. 81, pp. 12,020-12,025). Similarly, the figures under the heading "Individual Maximum Day Delivery to Industrial Customers" in Exhibit 226, Table 2, Column 10, is an average, not a maximum (Vol. 81, pp. 12,025-12,026).

The formula used in Exhibit 227, as to Colorado-Wyoming Company, on the other hand, was the per cent which "Domestic, Commercial and Lost Gas" deliveries (as averaged and estimated, but not computed by the witness, Vol. 81, pp. 12,099, 12,100, 12,102, 12,104, 12,105, 12,107) on "Max-

imum Day Deliveries on Colorado Interstate Gas Company (Note: not Colorado-Wyoming Gas Company) Peak Day—Feb. 9, 1939," bear to "Coincident System Maximum Delivery to Industrial Customers" (estimated and averaged, not maximum and not computed, Vol. 81, pp. 12,090-12,093, 12,097, 12,098, 12,099, 12,112, 12,113). This he fixed in January, 1939 (Vol. 81, pp. 12,090, 12,091, 12,097, 12,098) (Ex. 227, Table 2, Volumes 7 and 10),

The witness stated "I think the demand on February 9, 1939, of the domestic customers was very close to the peak demand" although he admitted that he did not consider the demand on any other day of those domestic customers (Vol. 81, p. 12,088), and if there were a day or two in excess of that day "that would not be of any consequence." (Vol. 81, p. 12,105.)

The witness testified: "The month of January was the month in which the maximum industrial deliveries occurred.

"Q. What year?

"A. Of the period July, 1938 to June 30, 1939, inclusive.

"Q. That was the highest month in that particular year?

"A. That 12-month period, yes.

"Q. Your figures are not figures for any single day?

"A. That is correct. They are based on the average for the month.

"Q. They are the average figures, I see.

"A. If you would like to have a complete explanation of that I can give you the details of how it worked out.

"Q. All right, let's have it?

"A. The month in which the maximum demand for this class of service has been determined from a study of the aggregate monthly deliveries in the different months. The determination was then made of the maximum daily requirements for this class of service in the particular month indicating the maximum average daily delivery and the determination of the amounts for each customer.

"Q. Average and not peak?

"A. The demands of small industrial customers served, directly, from the pipe line have been estimated

at approximately the average daily demand computed from the number of calendar days in the monthly period for which readings were secured. For the industries served in the lines of the distribution plants, industrial demands have been determined at an amount approximating the average demand using the number of working days in the month."

(Vol. 81, pp. 12,090-12,092.)

For example, the witness testified that the maximum delivery to Colorado Portland Cement Company at Laporte in January, 1939, (as of which month Column 10, Table 2, Exhibit 227, is tabulated) was 108,641 M. c. f., which, divided by the number of days in the billing period, produces 3,504 M. c. f., the figure used as a maximum by him in that exhibit. (Vol. 81, p. 12,092.) He admitted, however, that the result was not a peak day, but stated that in his belief "the average day would approximate the peak day", because "generally speaking cement plants run under a steady load." He did not have the figures to show or know how many days that plant operated in January, 1939. (Vol. 81, pp. 12,097-12,099.)

As to the Great Western Sugar Company he gave 1,087 M. c. f. for January, 1939, in Column 10 under his heading, "Maximum Delivery," which was arrived at by dividing the total monthly deliveries by 31, although he did not know whether deliveries were made during all those 31 days or not. (Vol. 81, pp. 12,098, 12,099.)

Similarly all the figures used in Column 10, Table 2, Exhibit 227, entitled "Coincident System Maximum Delivery to Industrial Customers" with respect to sales to all other industrial customers "are all estimates based upon the deliveries during the month of January 1939." No examination was made as to actual duration and conditions of use in Fort Collins, figures for which were given by the witness as 550 M. c. f. in Column 10. "That is an estimate based on the number of working days in the month," and assumes that every domestic and industrial customer was using gas in equal amounts every working day of the month. (Vol. 81, pp. 12,099-12,101; 12,111-12,113.)

Witness stated: He used Denver temperature curve in making his estimates. He did not consider Cheyenne temperature nor the difference in average wind velocities in Denver and Cheyenne (Vol. 81, pp. 12,093, 12,094); that domestic and commercial gas sales "increase with the reduction in the weather" and the use of "the day of lowest temperature" is a reliable guide for determining maximum sales and peaks of such classes of customers. The weather does not have an important effect on industrial consumption. (Vol. 81, pp. 12,102, 12,105.) The seasonal factor in the industrial load of Colorado-Wyoming Company, he stated, is of a minor nature. (Vol. 81, p. 12,102.) In 1939 the temperature was "about normal or maybe a little subnormal. There was no peak." "The peak for the heating season, 1938-1939" the witness stated, "occurred in February," which was colder. (Vol. 81, p. 12,095.) Did not recall whether he had complete Cheyenne weather statistics—did not have a temperature curve. (Vol. 81, pp. 12,093-12,094.)

The time of "Coincident System Maximum Delivery to Industrial Customers," fixed by him as January, 1939, relates not to the year 1939, as stated in Exhibit 227 and as previously testified by the witness, but to "the period July, 1938, to June 30, 1939, inclusive." (Vol. 81, p. 12,091.) The witness would not say that February 9, 1939, was actually the peak-day delivery of Colorado Interstate Company to Colorado-Wyoming Company for domestic and commercial customers, during the period stated, but qualified his answer by adding "with reasonable accuracy that is correct." (Vol. 81, p. 12,107.)

The December 26, 1938 system peak of Colorado-Wyoming Company of 15,244 M. c. f. was called to his attention, and when asked why that peak was not used in Exhibit 277, he replied "I used class peak as distinguished from system peak. System peak is not a matter of determination." Yet he used system peak in the case of Colorado Interstate Company, because he said "it was the same as the class peak." (Vol. 81, pp. 12,103, 12,104, 12,109.) Witness did not know the breakdown between industrial and other consumers. (Vol. 81, pp. 12,108-12,109.)

Witness has no information with respect to peaks and

peak-day deliveries in 1940, although Exhibit 227 was prepared in January, 1941. (Vol. 81, p. 12,088.)

The attention of the witness was called to Exhibit 226, Table 2, Column 10, Line 28, where the "Individual Maximum Day Delivery to Industrial Customers" to Colorado-Wyoming Company by Colorado Interstate Company is shown as 8,580 M. c. f., and to Exhibit 227, Table 2, Column 11, Line 40, where the total of "Individual Maximum Day Delivery to Industrial Customers" is shown as 10,512 M. c. f. His explanation of the difference was: "Out of the 10,512 M. c. f., 8,579 M. c. f. are daily, actual readings, the balance being estimates based upon available information." The estimated figure 8,579 M. c. f. he thought was the total for the month (December 1938) divided by the number of days in the month,—an estimate averaged and not an actual or a maximum at all. (Vol. 81, pp. 12,109-12,112.) The total of Column 10, Table 2, Exhibit 227 "Coincident System Maximum Delivery to Industrial Customers," by Colorado-Wyoming Company, and every figure in the column which produces the total of 6,969 M. c. f., is an estimate, the witness stated. (Vol. 81, pp. 12,112, 12,113.)

The witness testified (Vol. 81, pp. 12,083-12,085, 12,101) that had the same formula of apportionment of capacity costs between "Domestic, Commercial and Lost Gas" and the "Industrials" been used in Exhibit 227, in relation to Colorado-Wyoming Company, as was actually used in Exhibit 226 in the same apportionment with respect to Colorado Interstate Company, "the answer would be incorrect"; yet later (Vol. 81, p. 12,103) when asked the "certain differences" which he had stated justified the use of a different formula in each case, he replied, "I maintain the formulas are identical as applied to the Colorado Interstate and Colorado-Wyoming."

Further on cross-examination the witness testified: "Load factor is the ratio of the peak demand to the average demand and this determination gives effect to the capacity requirements." Both time and volume must be known in order to fix the load factor. He "allocated capacity to the domestic, commercial and lost gas based on their demands, maximum daily." The time element comes into the compu-

tation because the demands are "daily maximum demands" and had weekly or monthly demands been used, the answer might have been different. The time element enters into it because the day was used. "For the purpose of allocating costs," this satisfies the problem of load factor. The witness added: "I have determined that the allocation of capacity on the basis of the peak requirements for the class of service on the maximum day gives effect to the time element of demand." (Vol. 81, pp. 12,114, 12,115.)

"Q. All right, now, where did you apply the load factor?

"A. This exhibit does not apply load factor. It applies the loads themselves.

"Q. You say it in effect applies it?

"A. It gives effect to load factor.

"Q. Just as though you had given a load factor proper consideration?

"A. It does consider the load factor.

* * * * *

"Q. * * * Well, now, in your column 10, Table 2, have you considered the load factor involved in connection with each of those customers mentioned there, or did you treat them all alike?

"A. When I allocate the capacity costs in proportion to the maximum demand of each of the customers, I gave consideration to the load factor.

* * * * *

"Q. Where did you bring that result into this exhibit of yours?

"A. It is not necessary for me to calculate load factors because I allocated the capacity cost in accordance with the capacity requirements and that gives effect to the load factor.

"Q. But you don't take peak demands on this company system as your starting point. Now, how can you get any basis of load factor when you don't take the capacity of the system which you do not take?

"A. I do not use the capacity of the system.

"Q. No, nor the maximum delivery of the system, either one.

"A. That is correct.

"Q. And yet you have given full consideration to load factor?

"A. Yes, load factors of the individual customers.

• • • • •

"A. As to size of customers. I was thinking of two identical customers with the same peak requirement. The customer with a low load factor would have a low amount of volume.

"Q. On the total identical use or on the same peak demands?

"A. On the same peak demands.

"Q. That's right, but you don't find customers like that much, do you?

"A. When you are determining load factor it is necessary to consider both the volume and the demand.

• • • • •

"Q. Does it make any difference to you what is the date of demand?

"A. Yes.

"Q. Whether it is summer or winter?

"A. Yes.

"Q. Did you give that consideration?

"A. Yes, I have, because I have allocated the domestic and commercial customers as a group the proportion of the capacity costs which they demand of the facilities.

"Q. As a matter of fact, do you know—whether or not it is true that on repeated occasions the biggest customers that this company has have been shut off in whole or in part to satisfy the demands of the domestic customers?

"A. I recited the full data we had received from the company with respect to the shut-offs.

"Q. Which you said you didn't use in this exhibit?

"A. That is correct.

"Q. Yet you are charging this particular customer on your setup here with capacity costs, are you not?

"A. Yes. All of the industrials have been charged with capacity costs except the Valmont plant of the Public Service Company.

"Q. And under the operation of this system the Colo-

rado-Portland Cement Company is subject to shut-off and is shut off every year at various times and yet you are charging capacity—you are charging him a demand for capacity that he isn't entitled to. How do you justify that?

"A. After allocating the capacity to the industrial customers as a group I had—I have distributed them to the individual industrial customers in accordance with their individual maximum use.

"Q. All right.

"A. Now, if an industry is shut off, then peak does not occur. Now, to the extent—

"Q. But does occur in your table because you take them during the summertime so that you have given him a peak and charged him capacity on that peak demand and even though at a later time he doesn't get any.

"A. I will complete my other answer first.

"Q. All right.

"A. To the extent that reductions are made, it would be appropriate to reduce the allocated capacity and the individual industry affected.

"Q. Did you do it in this exhibit?

"A. I think I have in the case of the Valmont plant.

"Q. All right, have you in the case of the Colorado Portland Cement Company?

"A. No, because on the day of the coincident system maximum delivered to industrial customers the Colorado Portland Cement Company took 3,504 Mcf.

"Q. Because on that day they got that much gas and on many other days couldn't get any gas, you nevertheless charge plant capacity to them, nevertheless just because on that day they did get that amount of gas?

"A. That is correct.

"Now, if you would refer to the years 1937 and 1938—

"Q. I am referring to this exhibit. Now, you didn't charge any capacity against the Valmont plant because you called that a strictly emergency service?

"A. That is correct.

"Q. So that isn't comparable to either the Great Western Sugar Company or the Colorado Portland Cement Company, is that right?

"A. They aren't directly—they aren't closely comparable.

"Q. Now, you have stated it would be appropriate but you haven't done it, have you? You have still charged plant capacity against both of the two big industrial users which have been repeatedly shut off to satisfy domestic requirements?

"A. As I say, to the extent that the shut-off is carried out.

"Q. You have got plenty of evidence of shut-off in this case and in this record today.

"A. It may have been shut off on the day of the system peak but it was not shut off on the day of the industrial peak.

"Q. What does that prove?

"A. That is a fact.

"Q. Well, what does it prove?

"A. Well, in accordance with the method that I followed here, it is a part of the 6,969 Mcf.

"Q. I appreciate that, but what does it prove? It simply proves that you have taken some arbitrary figures, doesn't it?

"A. No.

"Q. You have recognized the principle in your written statement. You haven't applied it here as I understand, because on this particular day they weren't shut off.

"A. I thought I had made the point clear.

"Q. No, you haven't to me yet.

"A. That industrial coincidental demand was 6,969 Mcf. which occurred in January of the year 1939 and on that day the Colorado Portland Cement plant took approximately—as closely as we can determine—3,504 Mcf, and in accordance with the responsibility for that class of service, the gas was delivered.

"Q. On that day?

"A. On that day.

"Q. But there were a good many other days that they had to be closed down because the demand of domestic customers made it necessary, that doesn't enter into your calculation, does it?

* * * * *

"Q. Now you have charged, as I understand, capacity to a customer who can have gas except when somebody else wants it, or needs it. This somebody else being the domestic.

"A. Well, that is a conclusion.

• • • • • •

"Q. Well, you did not select for your consideration a day of which there are many upon which the domestic requirements crowded the Colorado Portland Cement Company entirely out of the line, do you?

"A. No, sir, I do not select the day here. The class peak demand determines the day."

(Vol. 81, pp. 12,115-12,127.)

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1. Volumetric costs are costs incurred predominately in proportion to the volume of gas handled, irrespective of the rate of delivery.

2. Capacity costs are costs of a consistently recurring nature which vary with the rate of gas delivery and are independent of the operating load factor. The customer costs are costs incurred to render special service to known customers, attributable only to the service rendered to such customers. Such costs are further of a nature that there is little or no relationship or mutual benefit with other customers connected to the same pipe line facilities.

(Vol. 81, pp. 12,004-12,005.)

• • • • • •

Q. Referring, Mr. Lyon, to Exhibit No. 227, upon what other exhibit does that exhibit have its foundation?

A. The amounts shown in this exhibit for operating expenses, depreciation, depletion, taxes, nonrecurring expenses, exploration and development costs, and working capital, have all been secured from exhibits heretofore introduced in these proceedings by accounting Examiners of the Federal Power Commission.

The amounts thus—

Q. Just a minute there. Will you give the numbers of those exhibits at that point?

A. The amounts for the plant investment and expenses of the Colorado-Wyoming Gas Company are taken from Exhibits 199, 203—

Q. What about Exhibit 202?

A. And 202.

Q. What about Exhibit 200?

Mr. Lange: Exhibit No. 200 is the service life estimate.

Mr. McCreery: I understand that. I asked if that was part of the foundation for this exhibit.

Mr. Lange: I don't know whether he recalled Exhibit No. 202 by title—I mean 200—

The Witness: I am not familiar with the title.

By Mr. McCreery:

Q. That is the study designated as "Study on Composite Service Life," isn't it?

A. No.

Q. You didn't use that?

A. No.

Q. Now we can go on with your typewritten statement.

A. The amount shown for gas purchased for Colorado Interstate Gas Company reflected the adjustment of the cost of that gas to equal the cost of service determined for such gas in the exhibit entitled "Canadian River Gas Company and Colorado Interstate Gas Company allocation of cost of service, year 1939," Exhibit No. 226. Any change in the cost—

Q. And in addition, the exhibits of the Commission with respect to Colorado Interstate Gas Company and Canadian River Gas Company upon which that Exhibit No. 226 in turn is vested?

A. That is correct. Any change in the cost of service determined in that exhibit for gas purchased by the respondent company necessitates a related change in this exhibit.

Q. You have already made that change, apparently? You have reflected changes in Exhibit No. 227 which you have already undertaken to make in Exhibit 226, is that true?

A. I haven't changed Exhibit No. 226.

Q. You made changes in Exhibit No. 226—

A. Exhibit 226 is carried forward into Exhibit No. 227.

Q. That is right. Now, did you prepare the exhibit—

A. Pardon me, I haven't completed my answer.

In addition to the adjusted expenses determined by the

Examiners of the Commission, this exhibit includes as an element of the cost of service, an amount calculated at 6 per cent per annum on the average net adjusted book cost of gas plant in service during the year 1939, as return on property in service; and an additional amount calculated at 6 per cent per annum on the amount of working capital, determined in the exhibits submitted by Examiners of the Commission.

These amounts for return are likewise included without prejudice as to the proper amounts which may be allowed, and have been adopted in this exhibit for the purpose of presenting a complete statement of the cost of service.

(Vol. 81, pp. 12,049-12,051.)

* * * * *

Q. Now with respect to the date February 9, 1939, did you say whether you had knowledge there were curtailments on that date and deliveries by Colorado-Wyoming Gas Company? And did you state the same concerning the following day, February 10, 1939?

A. This table I have here does not—from the table I have here of the Colorado-Wyoming Gas Company it does not show a curtailment on February 9, 1939. The Colorado Interstate Gas Company indicates in its report it had curtailed service to Colorado-Wyoming Gas Company on that day but Colorado-Wyoming Gas Company's statement, as I have it here, does not appear to reflect that.

Q. Do you know whether or not on February 9, 1939, at which time you reported a demand and service of 12,672 Mcf., that that service was rendered entirely to the resale domestic customers?

A. No, it was not. Of the 12,672 Mcf., the Great Western Sugar Company took 1,254 Mcf., the United States War Department took 25 Mcf., and the Denver Board of Water Commissioners took 63 Mcf., the Adolph Coors Brewery took 74 Mcf., the Golden Fire Brick Company took 258 Mcf., the Kuner-Empson Company took 81 Mcf., Denver Pressed Brick Company took 200 Mcf., and the United States War Department of Fort Warren, Wyoming, took 61 Mcf.

Q. After the shutdown on that day, did they take that?

A. I don't know.

Q. As a matter of fact, do your records show whether

or not Great Western Sugar Company went off at 9:30 a. m. and stayed off until 11:30; was on for a small load until 2:30, and then went off at midnight? You don't know about that?

A. I don't know if they were the exact figures as you quote them. I don't know whether they were correct. I know service was curtailed to the industrials but they did take the volumes that were reflected.

Q. There was no curtailment there on that day?

A. As I stated, the letter from the Colorado-Wyoming Gas Company did not show the curtailments.

Q. But you understood from other sources there was curtailment that day?

A. Yes, I understood from the Colorado Interstate Gas Company.

Q. And these customers you referred to, were they on that day curtailed?

A. I couldn't state that exactly.

Q. You don't know in answer to my question as to whether or not after curtailment on that day there only remained domestic customers? You are not in a position to answer, is that true?

A. Referring to your statement that they made partial deliveries on that day, I accept that as being correct.

Q. I mean partial deliveries during part of the day.

A. That is correct.

Q. So you don't know whether or not before the day was over the load was limited strictly to the domestic customers?

A. I don't know about that.

Q. Your records show, however, the shut-off of the Great Western Sugar Company, do they not?

A. No, they do not show that.

Q. The small industrials that you referred to, those amounts are estimates, are they not?

A. Yes, for those customers where the meters are positive meters and these meters which I have read, beginning with the United States War Department with displacement meters, the daily volumes are of necessity estimates.

Q. So that the estimate made is actually an average for the week, is it not?

A. It is very close to the average unless there was some special service.

Q. So it would be an average and not a peak day delivery for the week because your peak day delivery and your average are not the same, are they?

A. There would be reasonable grounds for difference between the two, yes.

Mr. McCreery: Do you desire to recess now?

(Vol. 81, pp. 12,067-12,070.)

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Q. Now, referring to Exhibit 226, Table 2, Columns 7, 8 and 9, what is the purpose and the effect of your apportionment into percentages of Columns 7, and 8, out of the total of Column 9?

A. Would you read that back, please?

(The question referred to was read by the reporter as set forth above.)

By Mr. McCreery:

Q. Referring to Line 51 of those three columns.

A. The percentages 44.917 and 55.083 were determined for the purpose of allocating the transmission capacity costs of the combined Canadian River Gas Company and Colorado Interstate Gas Company to the two classes of service set forth in Columns 7 and 8.

Q. Well, then, why did you arrive at that formula? Why was it thought that that was the formula to use there?

A. "Capacity costs of the transmission system have been first allocated to the major classes of service upon the basis of the class peak demand placed on the facilities by each class as a group. Such costs, after being allocated to each class of service, have been apportioned to individual customers or groups of customers in the proportion that the demand of each bears to the total of its class group."

Q. That is not responsive to my question. Perhaps you misunderstood my question. I asked you why you used that formula in arriving at these total apportionments here.

A. That is the correct formula to use.

Q. In any case of a transmission system where you are trying to apportion the domestic commercial and gas lost on the one hand the industrial on the other out of the total, that is the formula to use, is that right?

A. That is the determination to apply to that company at that time. I might explain that it happened in the period involved in this exhibit that the month of the industrial peak occurred *contemperaneously* with that of the domestic commercial and lost gas and the industrial demand coincident with the maximum domestic demand has been used for that reason.

Had the peak coincident demand of the industrial customers occurred at another time during the year, that would have been used as was used in the Colorado-Wyoming exhibit when—where the p k did so occur.

Q. All right, now, of course the difference in the practical operation of it is that the application of this same formula in the Colorado-Wyoming case would have given a very much higher proportion to the domestic, would it not?

A. It would, but the answer would be incorrect.

Q. Just a moment. Answer my question. We'll find out whether it is incorrect or not in a moment. I asked you whether it would not have been given a very substantially greater percentage to domestic.

A. You have not followed the testimony that I have just given.

Q. I am not concerned with your testimony. I said the application of this formula in the case of the Colorado-Wyoming would have produced, instead of the 49 per cent attributed by you in the same columns to domestic, it would have produced in excess of 65 per cent to the domestic users, would it not.

A. It would be an incorrect application.

Q. It would have produced that result, would it not?

A. You stated the application of this formula and that would be an incorrect application.

Q. I don't care whether it would or not. What would its application have done? Give me the computation and we'll decide that later, and how would it have been apportioned in applying this formula in the case of Colorado-Wyoming.

A. I repeat again that that is a misapplication of the formula.

Q. I heard you the first time. My question is for a computation.

A. It would be the ratio of 7014 to 10786.

Q. Well, what is that?

A. For the domestic commercial and lost gas—you want me to make the calculation?

Q. Yes, sir, I do.

A. All right. Subject to the correctness of my calculations I think it would be 65.3 per cent for domestic, commercial and lost gas, and the remainder 34.7 per cent for industrial.

Q. Now, you said the reason you did that was because the peak demand for the industrials came in a different month than the month of February, isn't that true?

A. Yes.

Q. All right, now, why is it wrong, just because it is different?

A. On Thursday, January 7, 1937, the application in this method would have resulted in 38.53 per cent—

Q. Wait a minute. The application of which method?

A. The method I am following here.

Q. Your method?

A. Correct. I will read the complete figures here. At least the figures I will read correspond to the figures in Columns 7, 8, 9 and 10 of Table 2, Exhibit 227, covering other periods of operation. The figure for Column 7 on Thursday, January 7, 1937, was 6,406—

Q. Wait a minute. Under what theory?

A. The same method, the determination of the peak day demand.

Q. You have 7,014 here.

A. That is correct. That is the figure for Thursday, February 9, 1939.

Q. Now you are going to what date?

A. Thursday, January 7, 1937.

As I understood your question, you asked me why I did it in this manner—

Q. Just to show you get a different result, doesn't convince me that is the—

A. I intend to show this is a recurring characteristic first. These figures—

Q. Before you give those figures, let me suggest this to you, also; that February 9, 1939 wasn't the peak demand of the domestic any more than it was of the industrial.

A. That is your statement. I think that the demand on

February 9, 1939 of the domestic customers was very close to the peak demand.

Q. You think it is the peak demand. All right, we will stop right there. Did you consider the demand on any other day of these domestic customers?

A. In the preparation of this exhibit?

Q. Yes.

A. No.

Q. So you don't know whether it was the peak demand or not?

A. My working papers show that it was the peak demand.

Q. Bring out your working papers. I understand your working papers show nothing in 1940, is that right?

A. That is correct.

Q. So you haven't anything in the year 1940, although this exhibit was made up in January 1941, am I right?

A. The most recent available complete information, both demands and accounting data, was the year 1939—

Q. Wait a minute. This information, and you know it, has been available at any time since it was compiled from the records of that company. Don't tell me that—

A. The statement still stands that the complete information showing the costs—identical demand figures; I could have secured for the year 1940.

Q. What are the demands for the domestic customers in 1940?

A. I don't have them here.

Q. You don't have them at all. I see. So the only figure you have is February 9, 1939?

A. The working papers reflect the coincidental delivery from the system for the maximum day of each month. To illustrate, at Fort Collins the maximum delivery during the month of January 1939 occurred on January 16, and it was 1,707. The delivery to the same customer on the date of the maximum in February, being February 9, was 2,351, indicating that the deliveries to Fort Collins on the peak day in February 1939 were considerably in excess of what they were in January 1939.

Referring further to the other month that has been mentioned, to December, the deliveries on the maximum day,

December 26, 1938, were 2,087 which is lower than the deliveries on February 9, 1939.

Q. That is from Fort Collins?

A. That is correct. I have similar figures for all points of delivery.

Q. Have you figures for January 18, 1940; January 19, 1940; December 13, 1940; December 14, 1940?

A. No.

Q. You have none of those? What day is represented in Column 10 of Table 2, Exhibit 227? What day was that?

A. That occurred during January.

Q. What day in January?

A. The same method of compilation of that data—

Q. What is the date?

A. I will explain it in a minute.

Q. Just give me the date and then we can talk about it.

A. I don't use the date. The maximum is made from the monthly figure.

Q. It is an average, isn't it?

A. I am trying to explain how it was determined.

Q. Give me the date. I want the date to start with.

A. The date isn't of consequence.

Q. I want the date whether it is of consequence or not.

A. Shall I select a date in January for you because the calculation is made from the monthly volumes?

Q. If it isn't any day in January; I want to know that.

A. I do not have the day. The month of January was the month in which the maximum industrial deliveries occurred.

Q. What year?

A. Of the period July 1938 to June 30, 1939, inclusive.

Q. That was the highest month in that particular year?

A. That 12-month period, yes.

Q. Your figures are not figures for any single day?

A. That is correct. They are based on the average for the month.

Q. They are average figures, I see.

A. If you would like to have a complete explanation of that, I can give you the details of how it is worked out.

Q. All right, let's have it.

A. The month in which the maximum demand for this

class of service occurred has been determined from a study of the aggregate monthly deliveries in the different months. The determination was then made of the maximum daily requirements for this class of service in the particular month indicating the maximum average daily delivery and the *determinaion* of the amounts for each customer.

Q. Average, and not peak?

A. The demands of small indsutrial customers served directly from the pipe line have been estimated at approximately the average daily demand computed from the number of calendar days in the monthly period for which readings were secured. For the industries served in the lines of distribution plants, the industrial demands have been determined at an amount approximating the average demand using the number of working days in the month.

Q. Well, now, let's get down to particulars. Have you finished that?

A. Yes.

Q. Now, for instance, we will take the Colorado Portland Cement Company. You have a figure of 3,504 Mcf. How did you arrive at that?

A. It is based on a determination for the deliveries during the month of January. Due to the fact that I do not have the exact billing data in the working papers, I do not have the exact diversity, but it would be 108,641 mcf divided by the number of days in that particular billing period.

Q. 108,641 what?

A. The deliveries to the Colorado Portland Cement Company recorded for January 1939.

Q. I was asking for February but I will take January. Let's take January. What were the deliveries in January?

A. The figures I just read.

Q. 106,634 Mcf.?

A. 108,634 Mcf.

Q. And how many days was the service rendered that month?

A. I didn't bring the billing data with me but it would be based upon that figure.

Q. What would be the average for the month according to your method?

A. I am assuming that customer is billed on a calendar basis.

Q. Let's assume that and if there is a correction it is satisfactory to make it.

A. It hits exactly the figure I have, 3,504 mcf.

Q. Now, did you look into the temperature conditions at that time and find January 1939 was an extremely mild month?

A. Yes.

Q. You did?

A. I don't know that it was an extremely mild month but I have the temperature curves.

Q. All right, let's see those.

A. I have a curve plotted for the city of Denver, Colorado, the data for which was taken from the United States Weather Bureau station in Denver showing the mean daily temperature.

Q. Have you a curve plotted for Cheyenne, Wyoming?

A. No, I do not.

Q. Cheyenne would be the demand that would affect the flow of gas to the Colorado Portland Cement Company, would it not? This company doesn't supply Denver.

A. I am afraid you have too many points in your question. I think that the temperature in Denver is within a range of the temperature in Cheyenne.

Q. How about wind conditions in Cheyenne?

A. It is quite true Cheyenne would be colder, being in a more northerly latitude, but the difference would not be appreciable or to an extent that it would distort or destroy the difference—

Q. What about the average wind velocity in Cheyenne and Denver?

A. They can be secured. I don't have them here.

Q. You don't have them here and you didn't use them?

A. For the purpose of demand of the Colorado Portland Cement Company—

Q. For any part. You don't have it at Cheyenne?

A. I don't recall whether we had complete weather statistics for Cheyenne or not. I do have the annual degree day deficiency.

Q. All right, let's come to this—

A. —which shows for the period—

Q. I don't want the annual. I am talking about January.

A. You asked me—

Q. I asked for January, stating that it was a milder month than February. That was my question. You admitted it was mild and you didn't know how much milder.

A. I said that I couldn't state it was milder, but I have the exact figures for Denver and that graph plotted would indicate whether or not the weather in the month of January 1939 was above or below normal.

Q. Above or below normal? Does it show how much above or below normal?

A. The graph is self-explanatory. It includes both the normal temperature and the daily mean temperature actual for the month of January.

Q. So you compare it with February?

A. That is correct.

Q. February 1939?

A. That is correct. Apparently, as I inspect the curve for the month of January 1939, the temperature is probably about normal or maybe a little sub-normal. There was no peak. The peak for the heating season 1938-1939 occurred in February.

Q. So that meant a lower temperature?

A. That is correct. The severity reached its peak in February.

Q. So February was colder than January?

A. That is correct.

Q. So at the time of this maximum day delivery of Colorado Interstate Gas Company on February 9, 1939, we were dealing, so far as the territory of the Colorado-Wyoming Gas Company was concerned, with a milder month than—no, with a colder month, and the Cement plant was off in February, wasn't it?

A. I don't get the relationship between the two.

Q. Was it off in February? Was the Cement plant operating in February?

A. Pardon me, but you have two statements there.

Q. I will withdraw them and ask you this: Was the Cement plant operating in February 1939?

A. No.

Q. All right. So there was a higher demand for domes-

tic gas in February 1939, was there not, than in January 1939?

A. I would expect so, and that was the reason, as I have stated—

Q. Did you examine to see?

A. Let me finish. That was the reason I believed that February would be the maximum necessary—

Q. Did you make a comparison on the domestics?

A. I recited the experience at Fort Collins, which I thought was illustrative.

Q. Did you make a study of everything, Cheyenne and all?

A. I can state that I did.

Q. You think so. Now, you have 3504 mcf in January from the Cement plant which was their average over the month?

A. That is correct.

Q. You do not have a peak day?

A. I believe the average day would approximate the peak day.

Q. Do you know it would?

A. No, but generally speaking Cement plants run under a steady load.

Q. Of course you don't know how many days it was on in January, do you?

A. I don't have the figures here, no.

Q. What about the Great Western Sugar Company plant?

A. The deliveries to the Great Western Sugar Company in February were 34,847 Mcf.; in January, 33,693 Mcf.

Q. So you took the February date for the Great Western Sugar Company, did you?

A. The dates, what?

Q. The month of February for this Column 10. What month did you take? January for the Great Western Sugar Company?

A. Column 10 is secured wholly from the month of January.

Q. How many days did the Great Western Sugar Company run that month?

A. I do not have that figure.

Q. You don't know?

A. No, I do not know, but I know on January 16, the day that the system—the day of that month that the system delivered a maximum amount of gas to the Great Western Sugar Company. What it delivered each of the days of the month, I do not know.

Q. You are talking about what—January 16, 1939?

A. That is correct.

Q. What do you say about January 16, that was the maximum of what?

A. That is the day during the month of January when the system delivered the maximum amount of gas.

Q. That was the peak day in January?

A. For the system, that is correct.

Q. What was that peak?

A. It was 12,070 Mcf.

Q. What?

A. 12,070 Mcf. These volumes are on a pressure base of 14.65 pounds absolute.

Q. Now, how did you get the figure of 1,087 Mcf. on Great Western Sugar Company?

A. That is the result of dividing the monthly deliveries by 31, the number of days covered in the period.

Q. You don't know whether the deliveries were made during all those 31 days or not, do you?

A. I do not know.

Q. The same thing is true with respect to the Cement plant, you divided by 31, but you don't know whether there was delivery all the way through the month, do you?

A. That is correct. The effect of those determinations is to produce, if anything, a lower coincidental industrial demand than would be determined—

Q. I am not concerned with what that figure is. I am concerned with the method and the accuracy of the plan followed to arrive at these results.

Now, all of the figures with respect to sale—beginning with sale to the United States War Department, to non-associated gas utilities and associated gas utilities, all of those are estimates, are they not?

A. In Column 10?

Q. Yes.

A. Yes, I believe they are estimated in the same fashion—in a similar fashion to the figures I have just given.

Q. As a matter of fact, you did make some readings

on the days, didn't you, with respect to Golden, Boulder, and Fort Collins? They have daily readings there, don't they?

A. In Column 10—you are still speaking of that column?

Q. They related to those various towns stated. Now, I say, referring to Fort Collins, the bottom town on Line 37, you have there 550 Mcf. They have daily reading there. What day did you read that, or is that an estimate, too?

A. Wait a minute and I will check it. That is an estimate based upon the number of working days in the month.

Q. That assumes that every domestic and industrial user was using every working day?

A. Yes.

Q. And that you don't know. Did you make these estimates, or did somebody else make them?

A. I issued instructions by which they were made.

Q. Somebody else made the estimates and you got them here as estimates. All right.

A. I repeat that the instructions were specific. I indicated exactly how they were to be made. There was no latitude. I stated that the monthly demand was to be divided by the averages—

Q. Without any examination as to the actual conditions of the users during the month, you just simply took the monthly demand and divided it and got an average?

A. That is correct.

Q. That doesn't represent a peak at all, does it?

A. It does if the industrial customers—

Q. Mr. Lyon, you stated that it would be wrong to use the same formula in connection with the Colorado-Wyoming Gas Company in your Table 2, Exhibit 226, for the reason that the industrial peak didn't come in the month of February.

Now, supposing the domestic peak didn't come in the month of February because the peak day here under consideration is a peak day of the Colorado Interstate Gas Company and not of the Colorado-Wyoming Gas Company.

A. It is also the coldest day in the period.

Q. That doesn't make any difference. It isn't the peak day. Supposing neither of these two classes of service had their peak day in this month that you have selected arbitrarily as against Colorado-Wyoming just because you

used it with Colorado Interstate. What would your formula be then?

A. That is a hypothetical question.

Q. I know it is. You haven't had any trouble with the hypothetical so far, so I venture that you can answer my question.

A. If the peak of the domestic and commercial load occurred other than as I have used it, I think that that coincidental commercial and domestic peak would be a reasonable base to use, but that peak must be recurring, and as I was reciting, I was showing that this was a recurring characteristic year by year.

Q. What is?

A. The domestic and commercial gas sales increase with the reduction in the weather and that the use of the day of the lowest temperature as a guide for determining the maximum domestic and commercial sales is reliable.

Q. In other words, in the colder weather it develops a domestic use?

A. That is correct.

Q. On both systems?

A. That is correct.

Q. What about your industrial?

A. The weather does not have as an important effect on the industrial consumption—in fact, the weather is of minor consequence.

Q. That is true in both systems, is it not?

A. Yes, it is. There is some seasonal factor in some of the loads—

Q. Of both companies?

A. That is correct. It is of a minor nature.

Q. What else? Is there any differentiating factors?

A. Differentiating factors—I am sorry, but I lost out.

Q. In the operation of these companies you have alleged there were certain differences that justified you from departing from the formula used by the Colorado Interstate and applying another formula to the Colorado-Wyoming which by coincident is much less favorable to Colorado-Wyoming than if you had used the other formula used in Colorado Interstate—.

A. I maintain the formulas are identical as applied to the Colorado Interstate and Colorado-Wyoming.

Q. You maintain that except you don't have Column 10, a similar Column 10, to Table 2, Exhibit 227?

A. I explained why I did not.

Q. Why is that?

A. Because it makes industrial demand incurred coincident with the system's maximum demand and it was unnecessary to add it. It would have been unnecessary repetition of the figures in Column 8.

Q. And that is true with respect to that 12-month period alone? You don't know about any other 12-month period?

A. That is correct for that period and I have the figures for the two preceding years.

Q. How about the year following?

A. 1940?

Q. Yes.

A. As I stated, I do not have the figures.

Q. You don't have them with respect to the other company?

A. That is correct.

Q. February 9, 1939 was the period of maximum day deliveries by Colorado Interstate for that year, wasn't it?

A. For the 12 months ending June 30, 1939.

Q. Now, then, you are undertaking to say that that was the maximum day delivery of domestic load for that company at any time during that year?

A. Approximately, yes.

Q. Approximately?

A. Yes.

Q. What was the highest load? What other day?

A. I don't know of any.

Q. What do you mean by approximately?

A. As I have stated, for the purpose of this exhibit—

Q. I am not concerned with the purpose of this exhibit; I am concerned with facts.

Mr. Lange: Let him finish.

The Witness: For the purpose of this exhibit we are determining a percentage of distribution of capacity of the two classes of service.

By Mr. McCreery:

Q. We haven't gotten that far.

A. And the determination of the peak, domestic and

commercial sales on the day which I have used are within sufficient accuracy for the uses of this exhibit; whether there is another day or two that might be there, that would not be of any consequence in determining this percentage.

Q. I am not concerned with your theories of accuracy or inaccuracy. I want to know if that was the system for commercial users of Colorado Interstate Gas Company.

A. As far as I have been able to determine, it was.

Q. Did you check it yourself?

A. Each day for each customer?

Q. Yes.

A. That would be a tremendous detail. I don't think it necessary.

Q. How do you determine peak of the domestic load without checking it day by day? Isn't it—isn't that the way you checked it?

A. You can check it for reasonable accuracy by inspecting the temperature conditions. For instance, you wouldn't expect the commercial and domestic to have a heavy demand in July. There will be certain periods in the year when the peaks are liable to occur and those peaks are related to the temperature, so we inspected more carefully the data during the months that the domestic and commercial load was increasing and then made a careful determination of the day that we believed as the result of these determinations the peak occurred.

Q. You don't say as a matter of actual fact that February 9 was the maximum peak day delivery of domestic gas to domestic customers during that year by Colorado Interstate Gas Company?

A. I believe as far as I have been able to say, it was.

Q. Do you say it was a fact?

A. It would depend upon what the realm of accuracy would be that you would insist upon.

Q. This particular time is not the peak day of Colorado-Wyoming Gas Company. Why didn't you use Colorado-Wyoming Gas Company's peak day in Exhibit No. 227?

A. I have used the same day for Colorado-Wyoming Gas Company because it represents the maximum domestic and commercial demand for the system as a whole.

Q. You are sure of that?

A. I am sure of that.

Q. Are you sure of it?

A. I made sufficient examination to a point where I think I am sure of it.

Q. Does it represent the maximum peak day for domestic demands?

A. That is what I said.

Q. You said both domestic and commercial. You say 7,014 mcf was the peak day delivery by Colorado Interstate Gas Company in that year?

A. For domestic and commercial use.

Q. Is that what you used?

A. With reasonable accuracy that is correct.

Q. "With reasonable accuracy that is correct," whatever that means.

Now, you have no check for the year 1940, have you?

A. I have introduced no figures in these exhibits with reference to 1940.

Q. You go back to 1938?

A. I have those figures available.

Q. But you didn't use them?

A. For the purpose of this exhibit, no. I testified that the recurrence of the demands with the temperature enabled me to know that they do run together.

Q. As a matter of fact, within your year of July 1, 1938 to June 30, 1939, you had a much greater peak the other time, did you not, than the peak on this day?

A. What peak?

Q. Colorado-Wyoming Gas Company's total peak and its domestic and commercial peak.

A. I think that the domestic and commercial peak reached its maximum on Thursday, February 9, 1939 and the industrial peak reached a maximum during January 1939.

Q. And yet you wouldn't happen to know that there was a peak on December 26, 1938 for above this of 15,244 mcf according to your own figures?

A. That is a system peak.

Q. All right, what are the elements of that system peak?

A. The domestic and commercial and industrial.

Q. What is the amount of it?

A. The two totaled together give a figure—

Q. What is that?

A. I do not have the breakdown of the demand on that day.

Q. So you don't know?

A. I can get that information for you.

Q. But you don't know and didn't use it in this exhibit?

The Trial Examiner: You mean he didn't use it or he didn't know?

Mr. McCreery: First he didn't know about it and then he didn't use it.

The Witness: I know that the demand existed.

By Mr. McCreery:

Q. But you don't know what the figures were that made up the total?

A. I know what the totals were for the system for each maximum day each month.

Q. Why didn't you use the Colorado-Wyoming maximum peak in this Exhibit 227?

A. I used class peak as distinguished from system peak. System peak is not a matter necessary for this determination.

Q. You used system peak in the other case, didn't you?

A. I explained why, because it was the same as the class peak.

Q. But you didn't use our peak day at any time?

A. The system peak day?

Q. Yes.

A. That is correct.

Q. How is that?

A. That is correct.

Q. And yet you are apportioning capacity charges as between domestic and industrial not on the basis of the operation of the Colorado-Wyoming Gas Company's system but on the basis of the operation of the Colorado Interstate Gas Company's system?

A. No.

Q. Yes, you are.

Now, in Exhibit No. 226, Column 10, Line 28, Table 2, how did you arrive at the figure of 8,580?

A. Would you give me those references, please, Mr. Reporter?

(The question referred to was read by the reporter as set forth above.)

The Witness: That is a determination based upon the volume of deliveries during the month of December 1938.

By Mr. McCreery:

Q. Well, what is that? Is that the average for the month?

A. It is an estimate.

Q. An estimate, how made?

A. You see these figures are for three years.

Q. Can you tell me generally? What is it? an average estimate figure for the month of December?

A. Being an estimate it is my belief at the present time that it is based on the determination from the month.

Q. Total for the month divided by the number of days in the month?

A. I think that is correct. I was trying to check the monthly delivery.

Q. So if that is true, it isn't a maximum day, it is an average day. It is the average for the month, daily.

A. Yes.

Q. All right. Now, will you tell me, referring to Exhibit 227, Column 11, Line 40, Table 2, how is the figure 10,512 Mcf. arrived at?

A. Those are individual determinations for each of the customers; those customers whose volumes are read—

Q. How are those estimated?

A. Pardon me. That last sentence that I stated should have been those volumes are partly estimated and partly actual.

Q. Partly estimated on the average basis?

A. I can answer that specifically rather than generally.

Q. All right, let's have it.

A. The first figure of 62 Mcf. is an estimate based on the volume of sales for the week ending December 25, 1938. The basis for the determining of the next figure, 58 Mcf., are the deliveries of the week ending December 25, 1938. The next figure, the volume for the Colorado Portland Cement Company is an actual figure for the day of May 21, 1939. The next figure of 28 Mcf. is an estimate based on the volume for the week ending February 24, 1939. The

next figure of 226 mcf is an estimate based on the volume for the week ending October 14, 1938. The next figure is an actual figure on April 11, 1939.

Mr. Lange: Which one is that?

Mr. McCreery: Great Western Sugar.

Mr. Lange: 1609 mcf?

The Witness: 1609. The next figure, 258 mcf, is September 24, 1938. The next figure of 216 mcf is an estimate based on the—

By Mr. McCreery:

Q. 258 mcf was an estimate?

A. I am not quite sure of that. Having the day here I believe that is a daily actual figure.

Q. It is a weekly reading, as a matter of fact.

A. Is it? Then it must be an estimate. The next volume of 216 mcf is an estimate based on the week ending August 5, 1938.

The next figure of 22 mcf is an estimate based upon the month of February 1939. The next figure of 51 mcf is an estimate based on the month of February 1939 as well as 99 mcf, the next figure; as well as 297 mcf, the next figure; and 621, the next figure; and the next figure is 271 mcf, based on an estimate for the month of January 1939.

The next two figures, 72 mcf and 10 mcf, are estimates based on the month of February 1939. The next figure of 6 mcf and the figure after that of 41 mcf, and the figure after that of 595 mcf, is based on an estimate for the month of February 1939.

Out of the 10,512 Mcf., 7579 Mcf. are daily, actual readings, the balance being estimates based upon available information.

Q. Now, in Column 10 it shows a figure of 6969 mcf. How did you arrive at that?

A. Those figures are all estimates based upon the deliveries during the month of January 1939.

Q. Every figure there is an estimate?

A. That is correct.

Q. All right. Now, did you consider load factor con-

ditions on the lines of the Colorado-Wyoming Gas Company in your study?

A. Yes.

Q. Did you give them any effect?

A. The division of this capacity cost and the transmission system gives the effect to the load factor.

Q. Where do you give effect to the load factor? Show me.

A. The load factor is the ratio of the peak demand to the average demand and this determination gives effect to the capacity requirements.

Q. Well, isn't the load factor an individual thing to the customer and so far as the system is concerned it relates to the actual utilization in time and in percentage compared with the total capacity, does it not?

A. I am sorry, I lost out.

Q. Well, do not both time and volume enter into the load factor?

A. Both of those things must be known to fix it.

Q. Now, where does the time element enter into your computations at all?

A. I have allocated capacity to the domestic commercial and lost gas based on their demands, maximum daily.

Q. But where does the time element come in on that?

A. 24 hours a day.

Q. Where does it come in on your computation of capacity? In other words, a customer that uses all of his gas in two months would give a different load factor than if a customer spreads it out over 12 months, isn't that true?

A. That's correct.

Q. Now, where does your time element come into your computation at any point?

A. As I say, these demands are daily maximum demands. Had I used weekly or monthly maximum demands, the answer might have been different. The time element enters into it when I have used the day.

Q. You think that satisfies the problem of load factor?

A. For the purpose of allocating costs, I do.

Q. That is all the consideration you gave it?

A. I have determined that the allocation of capacity on the basis of the peak requirements for the class of service on the maximum day gives effect to the time element of demand.

Q. That's what you have decided?

A. Yes.

Q. All right. Now, as a matter of fact, do you know what the load factor is on the Colorado-Wyoming system for 1939?

A. Well, the total volume of deliveries is shown in Column 6, Line 40, dividing that by 365—the number of days in the year—that 365, I believe—it's not a Leap Year—would give the average daily load on the ratio of that figure to the coincidental system maximum day delivery, and would give you the load factor for the system on a daily basis.

Q. All right now.

Mr. Lange: Right there, you are referring to Line 40, Table 2 of Exhibit 227?

The Witness: That is correct.

By Mr. McCreery:

Q. All right, now, where did you apply the load factor?

A. This exhibit does not apply load factor. It applies the loads themselves.

Q. You say it in effect applies it?

A. It gives effect to load factor.

Q. Just as though you had given a load factor proper consideration?

A. It does consider the load factor.

Q. I see. Now, this morning you testified that you didn't give consideration and that diversity cancels the load factor in figuring costs. Now, did you follow a different course in that connection between these two exhibits or not?

A. I don't recall the connection which I made.

Q. Do you know what the load factor on this system was in 1939?

A. I have just given the basis for determining the average daily load. The day of the maximum system deliveries—

Q. What was the maximum system delivery in 1939?

A. The calendar year 1939?

Q. Yes.

A. It occurred on March 29, 1939.

Q. And how much was that?

A. 13,432,000 Mcf.

Q. What was that amount again?

A. 13,432,000 on March 29—pardon me. I'm on the wrong table.

Q. I thought you were.

A. It occurred on May 17, 1939.

Mr. Lange: Now, let's have that Mcf. figure.

The Witness: 12,512 Mcf.

By Mr. McCreery:

Q. May what?

A. May 17th.

Q. 1939?

A. 1939.

Q. That is your understanding of what the peak day demand on this system was in that year?

A. Peak day deliveries.

Q. Peak day deliveries, not demand, that's right. Well, now, in your column 10, Table 2, have you considered the load factor involved in connection with each of those customers mentioned there, or did you treat them all alike?

A. When I allocate the capacity costs in proportion to the maximum demand of each of the customers, I gave consideration to the load factor.

Q. All right, what was the load factor of the Colorado Portland Cement Company?

A. You will have to specify the time.

Q. During this interval, this year that you are talking about.

A. The year 1939?

Q. '39.

A. The annual volume was 864,390 mcf, which divided by 365 would give the average load.

Q. Where did you bring that result into this exhibit of yours?

A. It is not necessary for me to calculate load factors because I allocated the capacity cost in accordance with the capacity requirements and that gives effect to the load factor.

Q. But you don't take peak demands on this company system as your starting point. Now, how can you get any

basis of load factor when you don't take the capacity of the system which you do not take?

A. I do not use the capacity of the system.

Q. No, nor the maximum delivery of the system, either one.

A. That is correct.

Q. And yet you have given full consideration to load factor?

A. Yes, load factors of the individual customers.

May I make myself clear by stating that the volumetric costs are assessed uniformly in accordance with the volume and the capacity costs are assessed in accordance with the capacity. Therefore, a customer with a poor load factor will have a low amount of volumetric costs as compared to a customer with the same demand having a higher load factor.

Q. Well, the volumetric cost is based on consumption, isn't it?

A. That's correct.

Q. All right, the consumption may be greater than the man with a better load factor—the consumption of the man with a lower load factor may be greater than that of the other customer with a higher load factor, and I understand you to say something inconsistent with that.

A. The customer with the low load factor?

Q. He may have a higher consumption.

A. As to size of customers. I was thinking of two identical customers with the same peak requirement. The customer with a low load factor would have a low amount of volume.

Q. On the total identical use or on the same peak demands?

A. On the same peak demands.

Q. That's right, but you don't find customers like that much, do you?

A. When you are determining load factor it is necessary to consider both the volume and the demand.

Q. Would your figures have been different if the Colorado Portland Cement Company had taken this amount set forth in Column 11 for ten days and then not taken anything else for the whole year?

A. I got the last part. Will you read that question?

(The question referred to was read by the reporter as set forth above.)

The Witness: You say, do I give effect?

By Mr. McCreery:

Q. Would you have gotten a different result had the demands they followed right through on the basis of their maximum until they had gotten their full volume and then taken none the rest of the year rather than going up and down throughout the year, would that have made any difference to you?

A. If the demands had been incurred on the dates that they were reflected here and the annual volume was delivered for the year, it would make no difference in this analysis as to what volume was delivered on what day so long as it does not change the demand figures. This exhibit does not give consideration to the particular day on which the volume is delivered.

Q. Does it make any difference to you what is the date of demand?

A. Yes.

Q. Whether it is summer or winter?

A. Yes.

Q. Did you give that consideration?

A. Yes, I have, because I have allocated the domestic and commercial customers as a group the proportion of the capacity costs which they demand of the facilities.

Q. As a matter of fact, do you know whether it is not true—whether or not it is true that on repeated occasions the biggest customers that this company has have been shut off in whole or in part to satisfy the demands of the domestic customers?

A. I recited the full data we had received from the company with respect to the shut-offs.

Q. Which you said you didn't use in this exhibit?

A. That is correct.

Q. Yet you are charging this particular customer on your setup here with capacity costs, a[illegible]ou not?

A. Yes. All of the industrials have been charged with capacity costs except the Valmont plant of the Public Service Company.

Q. And under the operation of this system the Colorado-Portland Cement Company is subject to shut-off and is shut off every year at various times and yet you are charging capacity—you are charging him a demand for capacity that he isn't entitled to. How do you justify that?

A. After allocating the capacity to the industrial customers as a group I had—I have distributed them to the individual industrial customers in accordance with their individual maximum use.

Q. All right.

A. Now, if an industry is shut off, then peak does not occur. Now, to the extent—

Q. But does occur in your table because you take them during the summertime so that you have given him a peak and charged him capacity on that peak demand and even though at a later time he doesn't get any.

A. I will complete my other answer first.

Q. All right.

A. To the extent that reductions are made, it would be appropriate to reduce the allocated capacity and the individual industry affected.

Q. Did you do it in this exhibit?

A. I think I have in the case of the Valmont plant.

Q. All right, have you in the case of the Colorado Portland Cement Company?

A. No, because on the day of the coincident system maximum delivered to industrial customers the Colorado Portland Cement Company took 3,504 Mcf.

Q. Because on that day they got that much gas and on many other days couldn't get any gas, you nevertheless charge plant capacity to them, nevertheless, just because on that day they did get that amount of gas?

A. That is correct.

Now, if you would refer to the years 1937 and 1938—

Q. I am referring to this exhibit. Now, you didn't charge any capacity against the Valmont plant because you called that a strictly emergency service?

A. That is correct.

Q. So that isn't comparable to either the Great Western Sugar Company or the Colorado Portland Cement Company, is that right?

A. They aren't directly—they aren't closely comparable.

Q. Now, you have stated it would be appropriate but you haven't done it, have you? You have still charged plant capacity against both of the two big *indistrial* users which have been repeatedly shut off to satisfy domestic requirements?

A. As I say, to the extent that the shut-off is carried out.

Q. You have got plenty of evidence of shut-off in this case and in this record today.

A. It may have been shut off on the day of the system peak but it was not shut off on the day of the industrial peak.

Q. What does that prove?

A. That is a fact.

Q. Well, what does it prove?

A. Well, in accordance with the method that I followed here, it is a part of the 6,969 Mcf.

Q. I appreciate that, but what does it prove? It simply proves that you have taken some arbitrary figures, doesn't it?

A. No.

Q. You have recognized the principle in your written statement. You haven't applied it here as I understand, because on this particular day they weren't shut off.

A. I thought I had made the point clear.

Q. No, you haven't to me yet.

A. That industrial coincidental demand was 6,969 mcf which occurred in January of the year 1939 and on that day the Colorado Portland Cement plant took approximately—as closely as we can determine—3,504 Mcf., and in accordance with the responsibility for that class of service, the gas was delivered.

Q. On that day?

A. On that day.

Q. But there were a good many other days that they had to be closed down because the demand of domestic customers made it necessary, that doesn't enter into your calculation, does it?

A. Not in this exhibit, no, it does not.

Q. And January was a mild month without a domestic peak, was it not, according to your testimony?

A. I would say it would be an average month.

Q. It was milder than February, put it that way.

A. I can answer that best this way; that during that period there was no weather quite so severe as it was in February.

Q. That's right, so there was more of a peak in February than in January.

A. That's correct.

Q. Of domestic.

A. That's correct.

Q. And the Cement plant was off in February.

A. That is correct.

Q. Now, you have charged, as I understand, capacity to a customer who can have gas except when somebody else wants it, or needs it. This somebody else being the domestic.

A. Well, that is a conclusion.

Q. Well, I am asking you if that is not what you have done?

A. There are a number of things involved in that matter and I haven't been able to give you the 1937 and 1938 figures to show why this condition that existed in January and February has been followed as it has. The basis of the apportionment of 5029 Mcf. recurring in other years, and as I stated, on December 8, 1937—a day on which the company delivered 12,239 Mcf., it delivered 47.44 per cent of that to the domestic and commercials and lost gas as a group and 52.553 per cent of it to industrials as a group, so as applied to the year 1937 on the basis of peak responsibility alone, the allocation of capacity costs would have been substantially the same at it was in the year 1939.

Q. On a day that you elect for that purpose?

A. On the day of the class peak responsibility.

Q. But in 1938 the Cement plant was shut down because of domestic demands, was it not?

A. December 8, 1937.

Q. And December 1938 it was also shut down for domestic demands?

A. Well, regardess of what was shut down or what was done, the capacity was used, 47 per cent for the domestic and commercial.

Q. On that day?

A. That's correct.

Q. But you don't consider a day when the demands of

the domestic did crowd the Colorado Portland Cement Company entirely out of the line, do you?

A. I'm sorry, I don't follow that. I don't get that.

(The question referred to was read by the reporter, as set forth above.)

The Witness: I don't consider a day—I think the difficulty is—if you can amplify that, I think I can answer it, but could you place some additional words with that? I do not consider the day—

Q. Well, you did not select for your consideration a day of which there are many upon which the domestic requirements crowded the Colorado Portland Cement Company entirely out of the line, do you?

A. No, sir, I do not select the day here, the class peak demand determines the day.

Q. Now, in your study, as I understand, down in the Arkansas-Louisiana, you didn't have any problem of shut-off in fact, did you?

A. Only in emergencies, that's correct.

Q. When there was a breakdown of the line or something of that kind.

A. Yes.

Q. But not from other customer demand.

A. That's correct.

Q. So you never dealt with that problem down there.

A. It was considered, of course. We didn't have to turn off the industrial customers.

Q. And you never as a matter of fact got the—got to the capacity of the line down there while you were there?

A. I believe they did.

Q. You believe—you aren't sure of it?

A. I know that they removed pipe with one diameter and installed pipe of a larger diameter for the purpose of handling increased load.

Q. You stated in your qualifications and experience that this plan that you proposed here was followed by the Master in Federal Court in Arkansas.

A. No.

Q. It wasn't followed, was it?

A. I stated that the method which I presented in that case—

Q. But not the method here presented?

A. The principles I present here are close to those principles.

Q. But it was not the method, was it?

A. The method I followed here I have made applicable, I believe, to this system and the method I followed there applicable to that system. The two aren't the same.

Q. And the method that you proposed down there, even that wasn't followed by the Master, was it?

Mr. Lange: That wouldn't be binding on this Commission or this Examiner either.

Mr. McCreery: He says it was and I want to check him on it.

The Witness: The method that I presented in that Arkansas case which I referred to in my qualifications was one of maximum demand as a basis of assessing costs of transmission facilities and the method was followed as contrasted to the other demand such as the deficiency assessment in which the costs are not allocated by classes but the revenues of the industrial customers are credited to the total revenue—total cost of service and system.

By Mr. McCreery:

Q. Well, now, Mr. Lyon, you represented the plaintiffs in that case, did you not? You were employed by the plaintiff?

A. It was the Arkansas Natural Gas Company.

Q. That company was the plaintiff in the case, was it not?

A. In the first case—

Mr. Lange: What do you mean by "plaintiff"? What are you—what stage of the proceeding are you talking about, Mr. McCreery?

Mr. McCreery: I am talking about the proceedings before the Master.

Mr. Lange: Well, if he knows what you mean by the word "plaintiff" all right.

Mr. McCreery: I think he knows, Mr. Lange.

The Witness: Well, I am not certain of that because the words "defendant" and "plaintiff" change in the course of the case.

By Mr. McCreery:

Q. All right, you were representing the company?

A. That is correct.

Q. So we'll leave it this way, and in this report the company is referred to as the plaintiff and the city is the defendant. Now, as a matter of fact, the Master didn't agree at all with the proposed method of figuring this that was offered by the company, did it?

A. The Master did not.

Q. Yes, isn't that right?

A. The Master accepted and recommended the deficiency assessment method.

Q. But he didn't take the method that you proposed?

A. That is correct—the Master.

Q. And, of course, to prove the Master's report—

A. But the Master report, as I recall, was worked out to utilize this method. The company relinquished its claim, as I recall, to the method that the Master had first developed and the method that the company presented was then followed in view of the fact, as I recall, that the—

Q. Supposing you just read this into the record. This may refresh your recollection.

A. I am reading from—

Q. Read it first to yourself and then I'll—

A. "—report an opinion of Master, together with conclusions of law and findings of fact, Jordan Sellers, special Master, in the District Court of the United States, western district of Arkansas, Texarkana division, in equity, No. 219, Arkansas-Louisiana Gas Company, plaintiff, versus the City of Texarkana, Arkansas, et al., defendants, Page 115, entitled—Page 159—entitled "Waiver of Method of Calculation."

"266 E. In communications from both plaintiff and defendant it is conceded that this method of calculation would show a much larger cost of gas at the town border than would plaintiff's commodity-demand method."

Q. Just a minute. I want to refer back and identify

whether that isn't the Master plan of procedure. What is meant by this method of calculation? Whose method is that?

A. I do not agree with your conclusions. I will read 266 E—266 B, rather, on Page 156:

"Unquestionaby these demand charges should be borne by the customer, but since it is impracticable to make each consumer pay the exact proportion allocable to his demand, how is it to be accomplished? Owing to my unfamiliarity with the accounting methods of utilities and the paucity of authority on the subject, I have been considerably at sea in this matter, so that after I had thought my report was completed, still having doubts upon the matter, I called counsel together for another discussion. While the result of this discussion has not been the adoption by me of the methods of calculation advocated by either party, it has resulted in a clarification of my ideas on the subject so that now I have definite convictions on how this matter should be treated, and that is as follows:

"1. The inclusion in the rate base of all properties of the pipe line and production units, including all pipe line specially constructed to serve industrial consumers outside of municipalities.

"2. The ascertainment of the total gas handled by the system.

"3. The deduction from this total of all gas sold to industries, including in this deduction Palmer and Dixie-Gulf gas.

"4. The deduction from the production and transmission expense of all net profits arising from industrial sales above cost of gas as delivered to the industries' meters; losses, if any, to be deducted also from expenses.

"5. The division of the net gas, as above ascertained, into the net expenses (including allowances for amortization, depreciation reserve and return) as ascertained by the deduction of net return from industrial sales from total expenses.

"6. The multiplication being the multiplication of the quotient thus obtained by the total domestic and commercial sales and allowable leakage of the distributing unit.

"7. The carrying forward of the last result into the expenses of the distribution unit.

"The above method eliminates all consideration of industrial gas except the application of net returns or losses from its sale to the reduction of the expense account of the production and transmission system."

Shall I continue?

Q. Yes.

A. "The elimination of this industrial gas, as stated above, can in no wise affect the domestic consumer. The amount of industrial gas sold is no concern of his as long as it is not sold below cost. The utility can certainly be trusted to see that none of this gas is so sold. It would be ridiculous to assume that, even to meet prices of competitive fuels, any of this gas would be sold at any actual loss, and the testimony shows that no such sales are made. If they have been, the net loss should be deducted from the expense account so that the domestic consumer would not be called upon to stand any of this loss."

Q. Give the background of the statement. If you want to read the rest of it then, you can.

A. The Stuttgart case follows and then there is the waiver method of calculation. That is the conclusion.

Q. Read that.

A. "In communications from both plaintiff and defendant it is conceded that this method of calculation would show a much larger cost of gas at the town border than would plaintiff's commodity-demand method. With this knowledge, plaintiff waives its right to the calculation I have approved, and requests that the lower amount arrived at by its method be used. This it has a right to do, since it inures to its disadvantage and to the advantage of the defendant. Therefore, without approving this method of calculation by which this cost is arrived at, I use this lower method in all subsequent calculations."

Q. Who is the plaintiff?

A. The Arkansas-Louisiana Gas Company.

Q. You were the engineer for that company in this proceeding?

A. Yes.

Q. And this was the proceeding in which it was suggested that you prepare a certain method of allocation?

A. That is correct.

Q. In this proceeding both the distribution company and the production and transmission company were one, were they not?

A. Not at the time of the beginning of the case.

Q. At the time of the decision of this case they were all one company?

A. Subsequent to the initiation of the case the companies were mergered.

Q. They were one company at the time of the trial?

A. I couldn't state that for certain.

Q. You better find out. I want to know.

Mr. Lange: He doesn't know the legal status of that case, what it was in that particular stage.

Mr. McCreery: Surely he knows it.

The Trial Examiner: Perhaps he can refresh his memory there.

The Witness: I am sorry but I don't see that in here.

By Mr. McCreery:

Q. Do you want me to show it to you?

A. I know that the Arkansas-Louisiana Gas Company was formed as the result of a merger of the several companies during the course of this rate litigation, and as I recall it, the case was—it says here:

"On June 2, 1934, the case was referred to me as Master."

Q. It is the last paragraph?

A. "Since the last mentioned date the Southern, together with the Arkansas-Louisiana Natural Gas Company, the Reserve Natural Gas Company and Public Utilities Corporation have been mergered under the name of the Arkansas-Louisiana Natural Gas Company and this new company has been substituted as plaintiff."

Q. This was the company at which time owned both the transmission system and the distribution system?

A. That is correct, but I believe that took place after the hearings.

Q. This was a hearing, wasn't it?

A. This was the result of the hearings.

Q. Before that the three companies were solely-owned subsidiaries of the Arkansas Natural Gas Company, were they not?

A. Yes.

Q. I have one or two more questions and then I will be through.

Under your method of computation shown in Table 1, Exhibit 227, it would appear that under your cost determination the Colorado-Wyoming Gas Company is selling its gas to industrial users, direct industrial users, at less than cost. Is that true?

A. The aggregate revenues are about $13,000 less than the total cost.

Q. So that business is being carried, as you computed it, at a loss?

A. No, not necessarily. The total cost includes a return.

Q. Then it is carried below cost?

A. Below total cost, below return.

Q. And it is not a full return on 6 per cent on that part of its business, is that correct?

A. That is correct.

Q. But, nevertheless, in your apportionment of transmission and maintenance you charge half the income tax to the industrials. Why do you do that? Is it a matter of judgment?

A. Are you referring to a table?

Q. Table 6.

A. Table 6?

Q. Yes.

A. I have allocated 50 per cent of the return together with taxes for volumetric cost.

Q. And 50 per cent capacity cost?

A. That is correct.

Q. And part of that goes to industrials of this 50 per cent income tax, even though under your computation of cost the industrials are not paying their way?

A. The method of allocating income taxes which I have followed allocates taxes along with the return. The same statement I made with respect to Exhibit No. 226, con-

cerning the Colorado Interstate Gas Company's method of allocating income taxes would likewise apply to this company.

Q. But in that exhibit you show a profit from their industrial customers and here you show a return above your cost figure and here you show a return below your cost figure.

A. That would be correct.

Q. That wouldn't make any difference in your allocation?

A. It would make considerable difference.

Q. It didn't in fact make any difference, did it? You allocated the 50 per cent in both exhibits, didn't you?

A. The accruals for Federal income taxes for both companies have been allocated uniformly to the operations of the several functional divisions upon the basis of the proportion of the net adjusted book cost of gas plant in service in each functional division as at December 31, 1939.

This procedure results in the allocation of this item uniformly upon the same basis as the return, and does not consider the existing differences between cost of service and revenues.

It is apparent that in allocating this item of expense to these customers whose revenues are to remain undisturbed, the apportionment of income taxes should be based on net income derived utilizing actual revenues, rather than an apportionment distributed uniformly with a determined amount of return for income taxes, being based on net income, or due in proportion to amount of return earned measured by revenues collected, rather than upon cost of service as set forth in this exhibit.

Upon determination of the income taxes appropriate for the year 1939, the allocation thereof would be in accordance with the net income which should have been enjoyed in the light of the determinations.

Q. You still in the light of the fact that the $13,000 is below your cost, apportion 50 per cent to volumetric and 50 per cent to capacity and so charge to the industrials in that manner a substantial portion of the income tax?

A. That is correct. The amount of income tax has been included—accrued and reported by the accounting Examiners.

Q. All right, I just wanted to know. Some of these items, as indicated by Colorado Interstate Gas Company, were allocated in your opinion, your judgment, weren't they, similarly as in the other case, Exhibit No. 226?

A. The amounts for compressor station, labor, and superintendents, Table 6, and annual accruals for depreciation—

Q. Those are judgment figures, aren't they?

A. —of compressing station equipment, have determined as being applicable to volumetric costs.

Q. That is an opinion, as to how they should be divided?

A. Yes.

Q. And these you haven't divided, your opinion is they should be divided?

A. That is correct.

Q. It is purely an opinion matter?

A. That is correct, and I have explained in connection with the previous Exhibit 226 the principles by which I have been guided in making those determinations. I have likewise explained that I have been guided in making the determinations of the allocation of 50 per cent return, together with Federal and State income taxes to volumetric costs.

Q. Do I understand that $249,326.38, Column 10, Table 1, Exhibit 227, represents the cost which you think this company is entitled to in connection with its industrial customers?

A. I don't pass an opinion as to what the company is entitled to.

Q. What do you put the figure in there for?

A. I merely determined the cost.

Q. That is their cost, including a 6 per cent return?

A. That is correct.

Q. And the same thing is true below of all of the other items in that column totaling 599-some odd thousand dollars?

A. That is correct.

Q. But you are not undertaking to work out an application of a rate reduction by these figures?

Mr. Lange: I think he stated time and time again he didn't intend for these exhibits to determine rates or to fix rates but merely to allocate costs of service.

By Mr. McCreery:

Q. Whatever item of income, whether properly or improperly taken out of the income account of the company by the auditors in their exhibits, are out of your exhibit, are they not?

A. These figures are exactly the same as the figures in the accounting Examiner's reports, and any changes in those figures would affect the conclusions in their determinations.

Q. And as a matter of fact, whether those figures in all those Examiners' exhibits are correct or not, you don't know?

A. I believe they are correct.

Q. You don't know?

A. I depend upon the accountant's exhibits for their accuracy.

Q. Your plea is purely because you haven't anything else to go on? You haven't examined the books at all, have you?

A. I have not examined the books.

Q. Did you examine the company's exhibits?

A. I don't believe that I have.

Mr. McCreery: That is all.

The Trial Examiner: Do you have any redirect, Mr. Lange?

Mr. Lange: Just a few questions I want to ask.

Redirect Examination.

By Mr. Lange:

Q. Mr. Lyon, you stated in the preparation of these exhibits, Exhibits Nos. 226 through 228, you utilized certain named and numbered exhibits, accounting exhibits, that had heretofore been presented in this proceeding by Commission's counsel?

A. Yes.

Q. I will ask you whether each of those accounting ex-

hibits get down through December 31st—strike that—whether any of those accounting exhibits go beyond December 31, 1939 that you utilized?

A. No.

Q. They do not?

A. That is correct.

Q. And Exhibits 226 through 228, not any one of them go beyond December 31, 1939?

A. That is correct.

Q. In fact, Exhibits Nos. 226 and 227 are confined to the year 1939?

A. That is correct. The volumes for the calendar year and the capacity for the 12 months ending June 30, 1939—

Q. Exhibit No. 228 covers your treatment of the cost of the summary of service for the year 1937, 1938 and 1939?

A. That is correct.

Q. So not any one of those accounting exhibits that you considered in the preparation of these costs of service, nor in the cost of service exhibits themselves, did you go beyond December 31, 1939?

A. That is correct.

Q. And I will ask you again at this time whether in the preparation of Exhibit No. 226 or Exhibit 227 you in any manner attempted to relate that—strike that—whether any of the exhibits, 226 or 227, were compiled in an effort to determine or fix rates?

A. No.

Q. Were those exhibits confined to the subject as indicated by the title "Allocation of Cost of Service"?

A. That is correct.

Q. That was the extent of your treatment of the subject?

A. That is correct.

Q. And in connection with Exhibit No. 226, you referred to the fact that the use of the 6 per cent rate of return as a percentage on Table 4, was just used by you without any particular significance attached to that particular percentage?

A. That is correct.

Q. But you had to use some percentage?

A. It was a good round percentage to use.

Q. Did you proceed in the same fashion in connection with Exhibit No. 227?

A. Yes.

Q. And that appears in Table 4 of Exhibit 227?

A. Yes.

Q. Now, you were asked by Mr. McCreery with reference to the use of certain Mcf. figures that you did not at that time have converted to a uniform pressure base. Is that with reference to interruption of service?

A. That was with respect to demands.

Q. Yes, demands. Did you subsequently find whether or not you did have the conversion?

A. Yes, I believe that I have. If we can locate the figures—as I recall the two figures quoted were the total system deliveries on February 9, 1939. As I recall the figure that I quoted was 12,672 Mcf for February 9, 1939 on a contract metering base. The equivalent volume on the uniform pressure base is 10,886 mcf, and for December 26, 1938 the figure quoted was 15,244 mcf, and the equivalent volume on a uniform measurement basis is 13,075 mcf.

Mr. McCreery: State that figure again, will you please?

The Trial Examiner: 13,075 mcf, the last figure.

Mr. McCreery: 13,075 mcf. What is that figure?

The Witness: That is the system deliveries on December 26, 1938 measured on the uniform pressure base of 14.65 pounds per square inch absolute.

Mr. McCreery: What was your final figure of February 9?

The Witness: 10,886 mcf.

Mr. McCreery: I think these figures are off.

By Mr. Lange:

Q. Are those the figures you checked, Mr. Lyon, after you converted them?

Mr. McCreery: Are those conversions to 14.65?

The Witness: No the previous figures were on contract measurement base, whatever the bases were.

Mr. McCreery: That is 12.9?

The Witness: No, they vary from 12.30 to 12.90 pounds per square inch absolute. They generally run lower than 14.65 pressure base. Therefore, in converting to 14.65 the volumes would shrink.

Mr. McCreery: I appreciate that, but the shrinkage isn't according to your computation, what your computation is.

Of course, we can stipulate the correct figures into the record if you want to later. We can have them checked both ways and stipulate what it is.

The Trial Examiner: I think perhaps that would be better than wasting time now.

Mr. Lange: That would be agreeable. I just wanted to afford Mr. Lyon the opportunity while he was here to put them in the record. We can stipulate them subject to correction.

The Trial Examiner: That is all of your redirect, Mr. Lange?

Mr. Lange: That is all.

Mr. McCreery: I have two more questions and then I am through, if I may have two more, Mr. Examiner.

The Trial Examiner: Surely.

Recross Examination.

By Mr. McCreery:

Q. Mr. Lyon, did you give consideration or effect in your study to the fact that at the present time the entire capacity of the Colorado-Wyoming system is required to satisfy peak day demands of domestic consumers?

A. No effect.

Q. Now, in Table 1, Column 8, Exhibit 227, you have assigned $59,898.94 capacity costs to direct industrials, have you not?

A. Yes.

Q. The answer is yes?

A. Yes.

Q. Now, we compute what the Colorado Portland Cement Company's part of that $59,898.94 is, which is approximately $42,500, and let's assume that that is it just for the purposes of this question.

Now, if the Colorado Portland Cement Company used the deliveries shown on Table 2, Column 11, of 59.70 Mcf. for only one day, for a day during the year, and had no other consumption during the year, would the $42,500 figure which is part of the $59,898.94, referred to in Column 8, Table 1 of this same exhibit, change or remain the same under your computation?

A. I believe it would change unless that demand occurred on the day of the coincident system maximum deliveries to industrial customers.

Q. Well, let's assume that it took place on that precise day, then it would not change?

A. Only under those circumstances, it would not change.

Mr. McCreery: That is all.

Mr. Lange: That's all.

The Trial Examiner: Do you have anything further, Mr. Dougherty?

Mr. Dougherty: I have no questions. I have asked Mr. Lange if I might have the working papers on which the maximum demand day was computed for Colorado Interstate Gas Company in Exhibit 226, and I have also requested it for the memorandum. That need not hold him up. I may not have any questions, and if so we can do it in Washington.

Mr. McCreery: The working papers and the memorandum will be left here when he leaves tonight?

Mr. Lange: Yes.

Mr. McCreery: So that they will be available to us as well?

Mr. Lange: They will be available.

The Trial Examiner: Very well. I understand, however, that Mr. Lyon is to be excused from the hearing?

Mr. Lange: Well, now, there is this thing about the ex-

hibits themselves: Mr. Dougherty made the statement that if he did want to direct some further cross examination he would do it in Washington. We didn't want these exhibits to hang fire. In other words, we wanted to see that the offer on those exhibits was made.

Mr. Dougherty: Well, you can offer them and I can probably look that stuff over and let you know. I don't believe that it will be necessary to have him here to help on the exhibits in any way, Mr. Lange.

Mr. Lange: Very well on that, because we didn't want the exhibits to hang fire.

The Trial Examiner: Of course the exhibits have not as yet been offered.

Mr. Lange: We were just coming to the point where I wanted to make the offer.

The Trial Examiner: I understand Mr. Dougherty to indicate that it will not be necessary to hold up action on the exhibits.

Mr. Dougherty: No.

The Trial Examiner: In view of his request.

Mr. Dougherty: No.

Mr. Lange: We want to offer them at this time, Mr. Examiner.

Mr. Dougherty: I object to the Exhibits 226 and 226-A.

Mr. McCreery: I object to 227 and I would like to put in the record some formal objections to that exhibit, if the Examiner please. Of course I am not prepared to read them into the record at this time, which can be done, say, Monday.

The Trial Examiner: Well, supposing we take them up then. I don't think, Mr. Lange, it will be necessary to hold Mr. Lyon. Supposing we take these exhibits up, we'll say on Monday.

Mr. Dougherty: That's all right.

Mr. Lange: All three. Did anybody have any objection to 228?

Mr. McCreery: Yes, 228 similarly.

The Trial Examiner: We'll take them all up on Monday, and Mr. Lyon, you are excused from the hearing.

(Vol. 81, pp. 12083-12149.)

* * * * *

Mr. McCreery: If the Examiner please, with respect to Exhibit No. 227 and 228, Colorado-Wyoming Gas Company objects to the admission of those exhibits, first on the ground they are not responsive to the Natural Gas Act; second, that they are based on a non-existent income and non-existent property and non-existing expense charged to that property by the witness who presented the exhibit;

Furthermore, that the basic data in the exhibits is not accurate as shown by cross examination and on the face of the exhibit;

Further, that the entire theory of the exhibit is contrary to law; contrary to the actual operations and corporate setup of the Colorado-Wyoming Gas Company in that no consideration whatever or effect is given to the relation between domestic sales and industrial sales or sales for resale and direct industrial sales which distinction is recognized in the jurisdictional provisions of the Natural Gas Act and which is in fact a basis upon which the business of the Colorado-Wyoming Gas Company is carried on, there being preference for domestic and resale gas over direct industrial gas in fact and under the contracts;

Further, it appears that peak demands of the entire demands of the system is required to supply peak demands of resale and domestic customers as compared with direct industrial users.

For these various reasons the exhibit is objected to as being irrelevant, incompetent, immaterial and prejudicial.

The Trial Examiner: I might state with respect to all exhibits of Mr. Lyon, the Examiner will give very close study to the basis of the objection brought out by respondent's counsel, however, it doesn't seem to the Examiner to be harmful to admit the exhibits on that basis.

Therefore, the objections will be overruled and Exhibits 226, 226-A, 227 and 228 will be received.

(Exhibits 226, 226-A, 227 and 228, Witness Lyon, were received in evidence.)

(Vol. 83, pp. 12299-12300.)

The witness defined "volumetric costs" as "costs incurred predominately in proportion to the volume of gas handled, irrespective of the rate of delivery." "Capacity costs" he defines as "costs of a consistently recurring nature which may vary with the rate of gas delivery and are independent of the operating load factor." "Customer costs" he testified are "costs incurred to render special service to known customers, attributable only to the service rendered to such customer." (Vol. 81, pp. 12,004-12,005.)

Company Exhibit 245A (Appendix this Record)

V. COMMENTS ON EXHIBITS 227 (EX. 245A).

J. L. WILLARD, rate and valuation engineer, also testified in connection with Company Exhibits 245 and 245A for Colorado-Wyoming Company, with respect to Commission Exhibit 227, "Colorado-Wyoming Gas Company: Allocation of Cost of Service, 1939".

The witness testified:

"A. • • • In connection with Mr. Lyon's Exhibit 227 I have determined through calculation the amount of depreciated plant as reflected in Exhibit 199 that has been charged in Exhibit 227 to direct industrial customers. Through a charge of transmission volumetric costs, Mr. Lyon assigns to the direct industrial customers a return calculated at 6 per cent in the amount of $18,025.89 to the direct industrial customers.

"In the caption of transmission capacity costs, Mr. Lyon assigns to direct industrial customers an amount of return calculated at 6 per cent, the amount of $15,112.28 and to his distribution costs he assigns a return of $584.48 to the direct industrials.

"The total of these three items of return calculated at 6 per cent amounts to $33,722.65.

"Q. They actually amount to that amount, not the 6 per cent? They amount to that and capitalized at 6 per cent they produced the second figure?

• • • • • •

"*The Witness:* • • • That is the total amount which Mr. Lyon has assigned to direct industrial customers. He calculated his return on the basis of 6 per cent of the

plant. By capitalizing the amount of return assigned to direct industrials of 6 per cent I arrived at $562,044.14 which is the amount of plant charged by Mr. Lyon to direct industrial customers through his method. This amount results in a percentage of the total investment used by Mr. Lyon of 43.58 per cent."

(Vol. 83, pp. 12,442, 12,443.)

His position, as above stated, is summarized as follows:

	"Return At 6%	Equivalent Investment
Transmission—Volumetric Costs	$18,025.89	$300,431.50
Transmission—Capacity Costs	15,112.28	251,871.31
Cost of Distribution	584.48	9,741.33
Totals	$33,722.65	$562,044.14

Note: 'Equivalent Investment' above stated means the total plant as adopted in Exhibit 227 from Exhibit 199. The percentage of total plant is 43.58%."
(Ex. 245, Statement No. 1.)

Detail of his computation by which he shows that $562,044.12 of plant and investment is allocated and charged to industrial customers, by Commission exhibit is set forth in Exhibit 245A. (See Appendix.)

Company Exhibit No. 105 (Appendix this Record).

REVENUE EXPENSE, AND INCOME OF COMPANY.

(1) *All Revenue, Expense and Income—1929-1940, inclusive, actual; 1941-1949, inclusive, projected.*

(a) *Operations 1929-1939* (Ex. 105).

H. P. DAVIS, Secretary of Colorado-Wyoming Company presented Exhibit 105 (See Appendix), which he described as follows:

"The following statements have been compiled from the books and records of the company and reflect accurately the matters therein set forth as shown by such books and records.

"Statement No. 1 is balance sheet of the company for the 12 months period ending September 30, 1940.

"Statement No. 2 shows the earnings of the company for the same 12 months period ending September 30, 1940.

"Statement No. 3 is a tabulation of the volume of gas sold in Mcf. for the years 1929 to 1939, inclusive. The character of the sales and the volume of each type of sale is detailed. The year 1929 is adopted as the first year embraced in the statement for the reason that, in that year natural gas was first delivered to the company by the Colorado Interstate Gas Company.

"Statement No. 4 reflects the gross revenue for the same period of years, 1929 to 1939, inclusive, similarly broken down as to character and types of sales."

(Vol. 24, pp. 3288, 3289.)

Gas Sales in M. c. f. (at contract pressure base) for the years 1929-1939 shows the volume and growth of the Company's business during that eleven-year period (Statement No. 3, Ex. 105). For the first and last years of the period the totals are:

Character of Sale	1929 In M.c.f.	1939
Sales for Resale	900,802	1,706,411
Sales to Public Authorities and Misc. Main Line Sales	9,449	41,117
Industrial Sales (direct)	708,989	1,584,918
Total	1,619,240	3,332,446

Gross Revenue for the years 1929-1939 is shown in Statement No. 4, Exhibit 105. For the first and last years of the eleven-year period the totals are:

	1929	1939
Sales for Resale	$270,612	$579,578
Sales to Public Authorities and Misc. Main Line Sales	3,319	14,870
Industrial Sales (direct)	120,076	226,491
Total	$394,007	$820,939

Earning Statement—for 12 months ending September 30, 1940 (Statement No. 2, Ex. 105), as broken down in "Supplemental Detail" (Ex. 114) shows in summary:

Character of Sale	M.c.f.	Revenue
Sales for Resale	1,800,390	$614,646.53
Sales to Public Authorities	25,134	10,049.20
Industrial Sales (direct)	1,347,843	192,924.83
Total	3,173,367	$817,620.56

of which totals "Sales to Associated Companies for resale" were 1,614,549 M. c. f. and $546,807.88.

Operation and Maintenance, including taxes and regulatory Commission expense, during that twelve months' period, as reflected in Exhibits 105 and 114, were:

Purchased Gas	$515,246.17
Operation:	
Transmission	7,462.27
Compressing	20,584.61
Measuring	7,334.08
Maintenance:	
Transmission	6,851.91
Compressing	2,022.26
Measuring	223.17
General taxes, including Colorado Income Tax	33,439.37
Federal Income taxes	25,388.13
Regulatory Commission expense	10,816.89
General Expenses	28,307.07
Gas used by Company	3,660.99
Total	$659,100.78

Q. Now, referring back to your Exhibit No. 105, under the balance sheet dated September 30, 1940, under Current and Accrued Assets, Receivables from Associated Companies, can you explain that item?

A. That represents current cash due from sale of gas to associated companies, the contract for which were shown in a previous exhibit.

Q. Over what periods do these receivables occur?
A. They are monthly billings.
Q. Monthly receivables?
A. Monthly billings.
Q. Monthly billings?
A. Yes.
Q. And the companies—did you name the companies?
A. Cheyenne Light, Fuel & Power Company and the Public Service Company of Colorado.
Q. The Cheyenne Light, Fuel & Power Company?
A. Yes.
Q. That is the company that distributes gas in the City of Cheyenne?
A. Only in Cheyenne.
Q. Only in Cheyenne?
A. Yes.
Q. It is purely a distributing company?
A. Yes, sir.
Q. Now, the next item of Materials and Supplies, what does that represent?
A. That is just our normal balance of working material on hand, repair parts and operating supplies. This is just about the average balance that we maintain at all times.
Q. In the balance sheet of September 30, 1940, what is included under Deferred Credits, Customers Advances for Construction?
A. That is an item of cash deposited with us by a customer for which we constructed certain properties and the item was to be refunded by them from time to time as they used gas.
Q. What customers are those?
A. I believe that happens to be the International Smelter—that was a deposit made by the United States Metals Foundation.
Q. All right, what does it represent? What was the deposit made for?
A. Primarily it was to assure us of the firmness of our contract when we made certain investments in order to serve them.
Q. Does that constitute the total item of $2982.14?
A. That is right.
Q. That is actually an item refundable to them?
A. That particular outfit has passed out of the picture

but the people who were financing them, who still retain the property, we have given them every opportunity to come in there and pick up in some fashion or other and do business with us and in that way they could enjoy that refund.

Q. What company is that?

A. It is Associate—I don't know how they term them, but Mr. Weckback was one of the local men who was a large stockholder in that.

Q. As of September 30, 1940 they didn't come in as you hoped they would?

A. No.

Q. As of September 30, 1940, the date of the balance sheet, is that proper accounting practice to include it under Deferred Credits, as you term it?

A. I don't—

Q. Is that still a deferred credit at that place on the balance sheet?

A. We haven't finally determined it wouldn't be refunded at some future date. When we do determine that we will put it in another place.

Q. As of September 30, 1940, the status it occupied then as an accounting method wouldn't properly have been included under Contributions in Aid of Construction?

A. That would be termed as non-refundable.

Q. Are the physical services still there?

A. Yes, they have never availed themselves of it.

Q. Are you sure the pipe for serving the company with gas is still in place at that point?

A. Yes.

Q. And no one has made themselves available for those services?

A. No, they haven't.

Q. There is no definite expression from anybody that they will?

A. There has been a number—I would say there have been prospects which haven't yet materialized, but we still hope they will.

Q. Just exactly what is the situation there with reference to the probability of it materializing?

A. Of course, the people who own the property are making every effort to secure some kind of an organization to go in there and operate it.

The Trial Examiner: What sort of property is it?

The Witness: It is a smelter.

The Trial Examiner: Iron ore or gold ore?

The Witness: Originally they planned to smelter all grades of ore, high, low, or any sort of metal, extracting everything from gold on up.

By Mr. Lange:

Q. How long has it been since it has been operated?
A. Probably two years.
Q. Probably two years?
A. Something like that. I can't recall exactly.
Q. You still have hopes of it materializing?
A. We hope it will, yes.
Q. As an accountant, do you still maintain that after two years when you construct a balance sheet as of September 30, 1940, with the item in that status, it still should be carried as a deferred credit rather than as a Contributions in Aid of Construction?
A. It would probably be our privilege to transfer that down to Contributions in Aid of Construction if we so chose.
Q. Wouldn't it be good practice?
A. Oh, not if you had decided that you would still refund that in case—
Q. It has been in that uncertain status, as you state, for two years. Suppose it continues on and on, when will it reach the point when you will decide that good accounting practices wouldn't prompt the keeping of that as a deferred credit the way you put it on the balance sheet?
A. I would say if nothing else develops within the next year we could probably do something at that time.
Q. Next year?
A. Next year. That should be enough time. Three years ought to be long enough.
Q. Two years wouldn't be long enough?
A. No.
Q. But three years would?
A. I believe so.

The Trial Examiner: What is the ordinary practice in a situation of that nature, Mr. Davis?

The Witness: Well, it would be transferred immediately on determining it was no longer refundable. We haven't chosen to call it that yet.

The Trial Examiner: I presume it depends upon the circumstances prevailing at the time the matter is under consideration?

The Witness: That is right.

The Trial Examiner: I think at this point we will stand in recess for five minutes.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

The Trial Examiner: The hearing will be in order.

By Mr. Lange:

Q. Mr. Davis, referring to the balance sheet of September 30, 1940, Liabilities and Other Credits, you have under Reserves, Reserve for Depreciation of Gas Plant, $504,482.22. How did you arrive at that figure?

A. That is the remainder in account at that date after certain charges and credits from time to time.

Q. All right, what rate of depreciation has the company set up in that account?

A. Well—

Q. I have reference to during the past year.

A. We have no specific rate.

Q. How did you arrive at the proper depreciation you set up each year?

A. There are more or less arbitrary amounts set up from year to year based upon what we felt was needed at that time.

Q. Based upon what your company officials felt was the need at that time?

A. That is right.

Q. How did they attempt to arrive at what was the need at that time?

A. It was a rather difficult thing to arrive at, if I might say so.

Q. What basis did they use or what method of approach did they employ?

A. At various times they used different approaches and

different percentages. At one time I believe we used four per cent straight line depreciation.

Q. During what year or years was that?

A. I think that prevailed for several years subsequent to 1925.

Q. How many years and what years? Can you give them?

A. I don't know that I can offhand.

Q. Do you have that in your work sheets here?

A. I'm not sure. Apparently during the early years of the company we were making an effort to substantially accrue an amount equivalent to what the Federal Income Tax Bureau would permit as a deduction, and later we—

Q. Well, now, let's see, what years are you talking about now?

A. Well, from about 1925 up to about 1929.

Q. '25 to '29?

A. Yes.

Q. Now, what did you set up for the first year?

A. 1926?

Q. Yes.

A. We set up $21,244.

Q. One thousand—

A. $21,244.

Q. And how did they arrive at that?

A. I don't recall now.

Q. Well, who determined what amount was to be set up that year?

A. The officials of the company.

Q. Well, in consultation with anyone else?

A. I presume it was, yes.

Q. With whom?

A. With their valuation department.

Q. All right, did you participate in those conferences?

A. No, I didn't.

Q. And who of the officials of the company participated in those conferences?

A. Well, I couldn't say. That all took place at the New York office at that time.

Q. The New York office?

A. Yes.

Q. And the advice was sent down to you and you entered the figures on the books of the company?

A. That's right.

Q. So you, then, as the man in charge of the accounts of the company, had no voice in the determination of that depreciation figure?

A. No.

Q. Well, was any inquiry made of you as to your views about it?

A. I don't recall that there was. I furnished them certain information in connection with it; that is, the plant values at the time, and they used those in their studies.

Q. You say these figures were arrived at at the New York office. Did the company at that time have any service contract with the predecessors of Petroleum Advisers, Inc.?

A. At that time the parent company was Cities Service Company.

Q. And who was the predecessor of Petroleum Advisers, Inc. at that time?

A. Henry L. Doherty & Company acted in that respect, the engineering company.

Q. And the company had their services under contract at that time just like you have Petroleum Advisers, Inc. at the present?

A. Yes.

Q. And what was set up or submitted to you for setting up on the company's books in that account for the next year?

A. I was usually furnished with a figure at approximately the beginning of the year that would be used during the coming year.

Q. What figure was furnished you at the beginning of the next year?

A. Well, the following year I set up $17,895.

The Trial Examiner: That was the year 1927, Mr. Davis?

The Witness: Yes, sir; so I presume that was the figure furnished to me.

By Mr. Lange:

Q. And you made no investigation yourself as an accountant as to the basic figure that went into the computation of this $17,000 item?

A. No, I didn't question the item at all.

Q. You made no independent computation of your own?
A. I didn't feel it was necessary.
Q. And who submitted that to you for entry?
A. I think Mr. Jones—Paul R. Jones, Secretary of Cities Service Company, officially made the direction.
Q. Out of the New York office?
A. Yes.
Q. And there was no explanation in the letter of communication to you as to a breakdown of that item?
A. No.
Q. And you, upon receipt of it, entered it on the company's books?
A. I proceeded to accrue it month by month.
Q. To accrue it month by month?
A. Yes.
Q. Now, what figures did you set up for the next year?
A. 1928, $23,070.
Q. $23,070?
A. Yes.
Q. And why did you set up that figure at that time?
A. I presume it was furnished to me.
Q. By the same—
A. By the same people.
Q. The same people out of New York?
A. Yes.
Q. And you made no independent investigation of it from an accounting standpoint?
A. I had no occasion to, no.
Q. And entered it on receipt?
A. I accepted it, yes.
Q. And what did you do for the following year?
A. I set up $25,749.
Q. And did you make any accounting investigation as to the basis of that figure?
A. No, I didn't recalculate it, if that's what you mean.
Q. Yes, or analyze it with the view of ascertaining the basis on which it was calculated?
A. It appeared to be a sufficient sum at that time.
Q. Were you an official of the company at that time?
A. I was secretary.
Q. And as secretary and as the man in charge of the accounting of the company's books and records, you made

no investigation of your own as to the method at which the figure was arrived at?

A. No, I had no occasion to. The figure was furnished to me by the officials and I used it.

Q. In other words, as an accountant, you used this figure purely as a judgment figure arrived at by somebody else?

A. Someone who perhaps had better judgment than I did on it.

Q. In your accounting work with this company, have you made any accounting determinations of proper depreciation rates to be applied on property of this character?

A. We have probably made a number of such, but we perhaps didn't apply them.

Q. Were they made on your own independent basis or—

A. Well, from our own viewpoint.

Q. From your own viewpoint?

A. Yes.

Q. Well, how did you approach the problem when you made this independent calculation?

A. I don't recall now what methods we did use. We were just making some tests—test checks, perhaps, for our own purposes.

Q. For your own—

A. We weren't comparing them with theirs or not submitting them for their consideration.

Q. In other words, they had submitted their figures first and then you would for your own testing purposes attempt to construct a basic figure and see how it would come out?

A. The whole purpose of the account was to endeavor to set up sufficient money to provide for replacements, extraordinary items as they might come up.

The properties being more or less new it was difficult to gauge the amount of money which would be required at any one time.

Q. Yes.

A. So you might say that in a sense we were feeling our way along, trying to arrive at an equitable accrual which would fit the occasion.

Q. Were you ever called upon as the accountant for the company to submit whatever figures you thought were the correct ones to estimate the proper accruals?

A. I never thought it in my province to volunteer anything of that sort.

Q. No, not as a voluntary statement but as a request from the New York office.

A. No, I don't recall that they did.

Q. Now, then, as I understand it, you were in supervisory charge of the company's books and records here, weren't you?

A. Yes.

Q. And the company's books and records are all kept at the Denver office.

A. That's right.

Q. So whenever the matter of accounting practice in any particular phase of the company's operations was at issue, the New York office would advise you in what manner to proceed?

A. Yes.

Q. And you would proceed in accordance with their instructions?

A. Yes.

Q. Even in all accounting matters like the matter of what should be set up as a proper depreciation accrual?

A. Yes.

Q. How long since the company's books and records or all corporate records were kept in the New York office?

A. They never were kept in the New York office.

Q. Not any of them?

A. The minute books were the only things.

Q. The directors' minute books?

A. Yes.

Q. Were kept for directors' meetings?

A. Yes.

Q. That was kept in New York?

A. Yes.

Q. Where is that kept now?

A. It is in the Denver office, my office.

Q. Since when has it been kept at the Denver office?

A. Since about August 1939, I believe.

Q. And were the meetings of the Board held in New York prior to that time?

A. Yes.

Q. And where are they held now?

A. In Denver.
Q. In Denver?
A. Yes.
Q. Now, what was the next year? Let's see, we had 1928 for the last one.

The Trial Examiner: 1929.

By Mr. Lange:

Q. Now, for the year 1930, what reserve did you set up?
A. $66,000.
Q. $66,000?
A. Yes.
Q. And you made no independent investigation of your own as an accountant or as an official of the company as to whether that reflected the proper accrual?
A. No.
Q. For that year?
A. No.
Q. That figure was also submitted to you from the New York office?
A. Yes.
Q. And pursuant to directions from them you entered it on the company's books and entered this figure that you have set up here—
A. Yes.
Q. On the balance sheet of Liabilities and Other Credits in Exhibit No. 105?
A. Yes.
Q. Now, for the year 1930, what figure did you apply?

The Trial Examiner: 1931.

By Mr. Lange:

Q. 1931.
A. $56,672.02.
Q. That figure was received and applied by you in a similar fashion?
A. Yes.
Q. And for 1932?
A. In 1932 we set up $32,183.
Q. That was received and applied by you in the same fashion as the others?
A. I presume it was.

Q. 1933?
A. $48,000.
Q. For 1934?
A. We accrued $48,000 for 1933, 1934, 1935 and 1936.
Q. The same amount for each year?
A. Yes.
Q. Why did that become static during that period?
A. We felt that was sufficient accrual for the purpose, and at the end of 1936 it appeared—
Q. You mean, when you speak of "we," you mean the company reached that conclusion and submitted those figures to you?
A. Yes. We allowed that to continue at that figure, and then for 1937 it appeared that we were accruing more rapidly than our needs were; so that the amount was—
Q. Wait a minute. In 1937 it appeared that you were accruing it at a greater or more rapid rate than your needs were?
A. Than our needs were.
Q. Well, what caused that change, then, to be noted? What brought about that change?
A. Well, our experience had shown us by then that our replacements had not materialized as rapidly as we thought, perhaps, they would.
Q. In other words, the judgment figures previously used were pretty much out of line?
A. Well, they were high in comparison with later results.
Q. Very much higher than the company's experience had shown?
A. Yes.
Q. And then for this next year you proceeded on what basis?
A. 1937 on, we have held it at $28,000 a year.
Q. $28,000 a year?
A. Believing that is ample for the purpose.
Q. And is that a rate considerably lower than what you had set up previously?
A. Oh, yes.
Q. About one and a half per cent?
A. Something like that.
Q. As against what was the other?

A. Four per cent, straight line.

Q. And you have been setting that up now ever since?

A. Yes, four years.

Q. And have you been called upon to ascertain and report to the New York officials as to how that rate is working out in actual experience?

A. Well, we no longer report to the New York officials. They aren't the parent company at this time.

Q. Well, whom *to* you report to?

A. We don't exactly report to anyone. We're an operating unit ourself.

Q. You are an operating unit yourself?

A. Yes.

Q. And who now determines the proper rate of accrual that you should set up on your books for depreciation?

A. I wouldn't say that there has been any determination recently of accrual. We just continue to use this nominal figure.

Q. Well, without any investigation or without any conference to determine whether or not it is adequate or in excess of your requirements?

A. It has proved to be adequate and a survey of our immediate needs shows that it will take care of us for some time.

Q. Well, when that question would come up for determination, who would participate in the conference and work out what would be considered a proper figure?

A. Well, we would probably work that out in conjunction with the Petroleum Advisers, Inc.

Q. Petroleum Advisers, Inc.?

A. Yes.

Q. That's what would probably take place?

A. Yes.

Q. You just stated a moment ago that you are now an independent company. I thought a while ago you didn't know what the stock ownership was in so far as the other companies are concerned.

Mr. McCreery: I think you have misapprehended his statement. He said they were an independent operating unit. He didn't say they were an independent company.

By Mr. Lange:

Q. What do you mean by "independent company"?

A. I mean operating on our own initiative. The officers are all local employes of the company.

Q. Who are the officers of the company at present?

A. Mr. Shortess is Vice President, myself as Secretary, Mr. Hurdle is Treasurer. The President's office is temporarily vacant.

Q. And who constitutes the Board of Directors?

A. The same four, plus Mr. Thackrey.

Q. The same four plus Mr. Thackrey?

A. Yes.

Q. And what is the stock ownership in each of those men?

A. None.

Q. No stock ownership?

A. No.

Q. What is the stock ownership in each of the officials of the company?

A. None.

Q. The directors' meetings, when you elect your officers, those directors' meetings are held here in Denver now?

A. Yes.

Q. How is the stock of the company voted and by whom?

A. The stock is not voted at the directors' meeting. It is voted at the stockholders' meeting.

Q. I mean the stockholders' meeting.

A. I don't attend the stockholders' meetings.

Q. You don't attend the stockholders' meetings?

A. No.

Q. Which of the officers of your company attend the stockholders' meetings?

A. The Assistant Secretary conducted the last meeting.

Q. Who is he? What is his name?

A. Mr. Wedum.

Q. Those meetings are held in Denver?

A. Not that last meeting, no.

Q. Where was that held?

A. New York City.

Q. You stated, though, that you never have attended any of them and hold no stock yourself?

A. No.

Q. Now, then, during the last two or three years that you set up these accruals on the basis as stated by you,

the accrual for depreciation, as Secretary for the Company, as its chief accountant, have you made any independent computations of your own to check the accuracy of the accruals you have set up in the light of the company's experience?

A. I don't just follow you on that.

Q. Well, I'll reconstruct it, then.

During the past three years that you have set up accruals on the basis as indicated by you; what check have you made as an official of the company and as its chief accountant with reference to the accuracy of those accruals in the light of the company's actual experience?

A. Well, I won't say that I have made any, what you might term computations in that respect. I though about it from the angle that I spoke of a minute ago which was that we had considerable sum accrued there which we thought was sufficient for the present, but we didn't feel like discontinuing accruals altogether. The amount we are using we felt was a fair balance either way; that is, from either angle you looked at it; so we just continued on that basis.

Q. I see. Well, what is your policy going to be from here on out with reference to the proper accruals that are to be set up?

A. Well, that probably will be governed a lot by what happens here in this room.

Q. Governed a lot by what happens in this room?

A. Yes.

Q. In this proceeding?

A. Yes.

The Trial Examiner: You mean after we get away from this room.

The Witness: Well, the result of it.

By Mr. Lange:

Q. Well, now, on this same balance sheet you have got under Liabilities and Other Credits an item $9,193.83 as contributions in aid of construction.

A. Yes, sir.

Q. What does that item represent?

A. That is a combination of several items, the principle

item being approximately $7,000, I believe. That was contributed by the Colorado Interstate Company.

Q. The Colorado Interstate Gas Company?

A. Colorado Interstate Gas Company, in consideration of certain investments that we made over here in Denver.

Q. What is that investment?

A. We constructed two branch lines to serve some small communities there that couldn't be feasibly served from the Denver system.

Q. Where? Near the outskirts of Denver?

A. Yes, on the western—

Q. Have they any corporate name?

A. I believe they term them Edgewater and Mount Air.

Q. What was the nature of the investment?

A. A pipe line to serve those territories.

Q. A pipe line to serve the territory?

A. Yes.

Q. You mean just the lateral or also the—

A. The high pressure lines, not the distribution.

Q. Not the distribution?

A. No, just the high pressure lines.

Q. Who distributes that?

A. Public Service.

Q. Public Service Company of Colorado?

A. Yes.

Q. Over what period of time was this one item of $7,000?

A. $7,000—

Q. Was that a single item then?

A. Yes.

Q. What were the other items that constituted the total of $9,193.83?

A. There is an item of $850 contributed by Kuner-Empson Company, when we built the branch line to serve their plant near Brighton.

Q. Where is that located?

A. The Town of Brighton which is about twenty miles northeast of Denver.

Q. In the State of Colorado?

A. Yes.

Q. And is gas distributed there?

A. In the town, yes.

Q. By whom?

A. Public Service Company.
Q. What was the name of that customer?
A. Kuner-Empson Company.
Q. Kuner-Empson Company?
A. Yes.
Q. Isn't that a direct sale customer?
A. That is an industrial plant that we serve there.
Q. Industrial plant?
A. Yes. The plant is outside of the town itself.
Q. It is outside of the town itself?
A. Yes.
Q. And what size line is utilized to serve that plant?
A. I believe a 2-inch branch line, if I remember right.
Q. When was that line constructed?
A. Some three or four years ago. I don't recall now.
Q. Is it presently in service?
A. Oh, yes.
Q. To that direct line industrial?
A. Yes.
Q. That constitutes the total of that item?
A. There is an item of $330 from the Lutheran Sanitorium that was contributed to enable us to build a branch high pressure line to that sanitorium and render service.
Q. Where is that sanitorium located?
A. I believe it is on West 38th Avenue.
Q. Is that a customer of Public Service Company of Colorado?
A. Yes.
Q. And how long has it been on the line?
A. Well, this particular line I believe was constructed about a year ago, or some such time.
Q. Any other item in that total?
A. Then there is an item of $407 which I will term contributions for main line taps, where we render individual take-off on our main line, where we required a contribution to offset the cost of such tapping.
Q. On your main trunk line?
A. Yes.
Q. All right, what else is in that item?
A. That's all. That should add up to $9,183.
Q. Do you still have any main line direct sale customers of your own?
A. Only industrial?

Q. Only industrial.

A. Yes.

Q. Well, haven't you turned all of the others over to the Public Service Company of Colorado?

A. Public Service Company of Colorado serves all direct main line service other than industrial.

Q. Referring to this statement you made a moment ago with reference to the last annual stockholders meeting, you said the assistant secretary participated in that. Where does he reside?

A. New York City, I believe.

Q. And what is his name?

A. Wedum.

Q. Does he have any other position or any position with any other companies?

A. I can't say.

Q. Do you know him?

A. Only by correspondence.

Q. Well, did you ever have occasion to receive any letters from him in connection with your work?

A. No, only in connection with the secretarial end of it.

Q. What work did he perform in so far as you know in connection with this company or any of the other companies?

A. He has been, I believe, assistant secretary of this company for a number of years, and I believe it was his usual practice to conduct the stockholders meetings.

Q. Well, as assistant secretary, what has been his instructions to you, if any, or have you given him instructions?

A. I have had no particular contact with him other than in connection with the meetings and minutes, and so forth.

Q. And how long has he functioned as assistant secretary?

A. I believe for a number of years. I can't say now without looking at the minute book.

Q. Does he ever come to Denver?

A. No.

The Trial Examiner: What was your answer?

The Witness: No.

By Mr. Lange:

Q. Now, on your earnings statement in Exhibit 105, that is also for the twelve months ending September 30, 1940?

A. Yes.

Q. The first item under Gas Sales you have listed as Industrial Sales.

A. Yes.

Q. Are those direct industrial sales?

A. That's right.

Q. And include all of the direct industrial sales?

A. Yes.

Q. That's $192,660.82.

A. Yes.

Q. And the next item, Sales to Affiliated Companies for Resale, $546,807.88. Have you got a breakdown of that?

A. That's sales to Cheyenne Light, Fuel & Power Company and to Public Service Company of Colorado.

Q. You have attached to that exhibit, Gross Revenue from Sales. Is that gross revenue from sales statement, does it only go through December 31, 1939?

A. Yes.

Q. So it does not reflect any of the revenues for 1940?

A. No, not in that one.

Q. Now, I assume that that is an annual sales statement, revenue statement that you have in your exhibit. Is that as of December 31st of each year?

A. Yes.

Q. From 1929 through 1939?

A. That's right.

Q. And do you have the gross revenue from sales as broken down on that statement for the twelve months ending September 30 of 1940 in your work sheets?

A. What was that again?

Q. Do you have the gross revenue from sales for the twelve months period ending September 30, 1940?

A. You mean broken down in the same fashion?

Q. That's right.

A. I believe I have it, but I'm not sure that I have it with me.

Q. Could you supply that?

A. I think we have that.

Mr. McCreery: What is it you want now?

Mr. Lange: The gross revenue from sales broken down—strike that.

The gross revenue from sales for the twelve months period ending September 30, 1940, broken down as appears in the statement attached to the exhibit for the several years from 1929 through 1939.

Mr. McCreery: You mean a breakdown as to individual sales?

The Witness: The same detail.

Mr. Lange: Yes, the same detail.

Mr. McCreery: I see.

By Mr. Lange:

Q. Of course, your earnings statement that I was just referring to covers the twelve months ending September 30, 1940?

A. Yes.

Q. And in order to be able to reconcile those figures I would like to have that detail.

A. All right.

Q. For that same fiscal period.

A. Yes, to correspond to this.

Mr. Lange: That's right.

Mr. McCreery: We will produce that.

Mr. Lange: Very well.

Q. Now, you have stated that this item under Sales to Affiliated Companies for Resale, includes the sales to all of the companies named on this gross revenue from sales in your exhibit.

A. Yes. The Public Service Company and the Cheyenne Light, Fuel & Power Company.

Q. That's the two affiliates, first; then the other item, Sales to Others, includes the remaining sales?

A. Greeley Gas and Fuel Company and Highway—

Q. Highway Gas Company?

A. Yes.

Q. Now, on this Gross Revenue from Sales statement

under Sales to Distributing Companies for Resale, Cheyenne Light, Fuel and Power Company, you have an item of Rebate on Heating Gas. What does that represent? That is, for the years 1934 through 1939?

A. Rebate reflects the reduction in heating gas that comes about through our amended contract there which we submitted.

Q. And that was not in effect prior to 1934?

A. No.

Mr. McCreery: That is identified as the contract set forth in Exhibit 102, Mr. Lange.

Mr. Lange: Exhibit 102?

Mr. McCreery: Yes, amendatory contract of August 24, 1934.

By Mr. Lange:

Q. Now, under Other Operating Revenue on that earnings statement you have an item of $8,000 received from affiliated companies. What does that item represent?

A. That is an annual revenue service charge which we received from Public Service Company for standby service at Valmont Generating Plant.

Q. Valmont Generating Plant?

A. Yes.

Q. Where is that located?

A. Near Boulder.

Q. Is that an annual payment or how is that received?

A. It is paid monthly.

Q. Monthly?

A. Twelve equal amounts.

Q. Which totals $8,000 a year?

A. That's right.

Q. Is that paid under a contractual arrangement?

A. Yes, I think we have already filed the contract.

Q. Under which contract is that—

Mr. McCreery: That is under Exhibit No. 103, the ninth contract.

Mr. Lange: The ninth contract, Valmont Generating Plant?

Mr. McCreery: Standby Service.

The Trial Examiner: That electricity there is generated by coal, isn't it?

Mr. McCreery: Yes, and this is a standby in the event of failure of the coal supply.

By Mr. Lange:

Q. Now, under that item as a deduction from total gross revenue, you have a deduction for bad debts of $444.26. What was the occasion for the deduction of that item in this twelve months statement?

A. This gas bill is written off as a deduction from revenue.

Q. Was it one bill?

A. I believe it was.

Q. What company?

A. I think it was this U. S. Smelter which we discoursed on a while ago.

Q. Oh, that United States Smelter that has gone out of business?

A. Yes.

Q. Isn't this item at least two or more years old, or how old is it actually?

A. Well, it was—it dates back to the time we rendered some primary service to them. They never did go into full operation.

Q. When was it payable? How many years since it was due and payable?

A. Oh, I guess it was either '38—I believe it was then.

Q. 1938?

A. I believe it is.

Q. It was over two years old on September 30, 1940, wasn't it?

A. It probably was.

Q. As a proper accounting practice, you wouldn't put that whole item of $444.26 in the operating statement for that one year as a proper deduction, would you?

A. It was taken in December of the previous year, as I remember it, so when we pick up the last three months of 1940 we naturally would find that there.

Mr. McCreery: The last three months of 1939, you mean?

The Witness: Yes.

By Mr. Lange:

Q. Even at that time, how old was it then?

A. Well, it was incurred in 1938 and it was approximately two years old.

Mr. McCreery: Two years old in 1939 if you secured it in 1938?

The Witness: If it was 1938 it was approximately that.

By Mr. Lange:

Q. Speaking as an accountant in proper accounting practices you would think that was a proper deduction in this earnings statement?

A. Well, I said that this write-off occurred in December. In picking up the last three months of 1939 we picked up that item?

Q. Well,—repeat that question back, Mr. Reporter.

(The question referred to was read by the reporter, as set forth above.)

The Witness: As I said before, we picked up this item as of the period in December—

By Mr. Lange:

Q. As an accountant?

A. —and if we distribute it in some other way, it wouldn't reflect the true condition of the books as of December.

Q. The way it now appears, does it appear as a correct accounting item in the light of that history?

A. The normal accounting procedure is to accrue some sum of money for bad debts. We have very few of those and when we have one bad debt we write if off.

Q. You don't set up any reserve?

A. No.

Q. That would ordinarily be done?

A. That is right.

Q. Under Operation and Maintenance, Purchased Gas Expense, Others, at $5,086.84 applicable to companies other than Colorado Interstate Gas Company. What other companies are those?

A. That is the gas that we buy from the Berthoud field.

Q. Gas that you buy from the Berthoud field?

A. Yes.

Q. Whom did you buy it from?

A. The present contract in force includes the Kir-Well Oil Company.

Q. The Kir-Well Oil Company?

A. Yes. That is the successor to Myer Goodstein who operated in the field.

Mr. McCreery: To clear up the record, will you have him state that the Berthoud field is in Colorado?

Mr. Lange: Yes.

Q. The Berthoud field is in the state of Colorado?

A. Yes.

Q. What other companies are there?

A. I believe that was all.

Q. All right, what amount of gas in volume was purchased by that company during that twelve months?

A. For the twelve months period it would be around 50,000,000 feet.

Q. At what price per Mcf. was that purchased?

A. Ten cents.

Q. Do you have a contract purchase on that?

A. Yes.

Q. Has that been included in the exhibits heretofore submitted?

Mr. McCreery: That has not yet been produced in evidence, Mr. Lange.

Mr. Lange: Not yet?

Mr. McCreery: No.

Mr. Lange: That will be submitted later, Mr. McCreery?

Mr. McCreery: Yes, it will.

By Mr. Lange:

Q. Are there any others in that item?

A. I think that is all.

Q. Do you know—strike that.

In connection with this conditioning expense that you have set up under Operation and Maintenance you have it broken down into Transmission Operation and Transmission Maintenance. What are the main items of cost that have gone into those items?

A. Well, the major items are the operation of the compressor stations and operation of pipe lines which in turn takes in salaries, supplies, and—

Q. Does that include metering stations, too?

A. Yes.

Q. What character of operation does that cover, any items that were attributable entirely to this one year's operation?

A. I believe it applies strictly to the period in question.

Q. In connection with this designation of Transmission Operation and Transmission Maintenance, you included metering stations?

A. Yes.

Q. You didn't segregate it?

A. Not this total item. It is part—

Q. Do you have the figures whereby you can segregate those two?

A. Yes, we can get them. They don't appear in this exhibit.

Q. Can you furnish them for the record?

Mr. McCreery: You mean you want a breakdown of the earnings statement between the pipe line and the compressor station and measuring station in transmission operation?

Mr. Lange: Yes.

Q. Now, Mr. Davis, do you know the character and use that metering stations serve this property?

A. Yes.

Q. What is it?

A. It is all wholesale measurement.

Q. Well, they serve the several—

A. The town border—

Q. The town border distribution plant?
A. That is right.
Q. They are not a function of transmission, are they?
A. Well,—

Mr. McCreery: I object. It is calling for a legal conclusion by the witness of what relation that has to the enterprise. He can describe what the physical operation is, but I object to his drawing any such conclusions. I have—

Mr. Lange: If he knows—

Mr. McCreery: Please let me finish.

Mr. Lange: I am sorry.

Mr. McCreery: I have no objection to bringing out the facts, but I object to any conclusions.

The Trial Examiner: You may explore what items the witness has contained in this classification he sets up on the statement.

Mr. Lange: Mr. Examiner, I want to test his knowledge of accounting. He certainly must know what these various items represent before he can properly classify them. He must know something with reference to the function of the items of property to determine their proper classifications,—if he doesn't know he can state it—or the use that is made of any particular item of property that gets into a particular classification.

The Trial Examiner: I think you may explore it. The objection will be overruled.

Mr. McCreery: Note an exception.

Mr. Lange: I will reframe the question.

Q. As an accountant, why have you included these metering station operations with transmission operations?
A. It is all a function of transmission. You can't transmit anything unless you let loose of it. You can't transmit it and hold it there. It isn't transmitted then.
Q. Does the transmission of gas end at the metering station as far as your transmission is concerned?
A. Yes, sir.

Q. And the metering of the gas as to the distributing company?

A. Yes, measuring out what you transmitted.

Q. That is how you can tell the volume of gas that the distributing company acquires or purchases?

A. Yes.

Q. If there were no distributing companies there would be no meters?

A. That is right.

Q. And as an accounting matter, do you think that the inclusion of that metering station expense is properly in transmission operation?

A. Unquestionably.

Q. One item?

A. Yes.

Q. It should be set up as one item rather than between the two, as between distribution system operations and transmission system operations?

A. If you determine that you have distribution operations, then we can set it up separately.

Q. Even if you don't yourself distribute gas, as an accounting matter there could be certain items attributable to distribution of gas that would not be attributable to transmission operations?

A. Distribution of gas in the normal understanding, I believe, is the carrying and delivering to numerous customers. This doesn't partake of that in that same relative way. This is a wholesale proposition. You wouldn't call a wholesaler a distributor.

Q. No, but what character of wholesalers are included in those delivery points?

A. All classes of sales, industrial, gas for resale—

Q. In other words, both direct as well as those for resale?

A. That is right.

Q. And in spite of that fact, as an accounting matter, you are still of the opinion that it should be included under transmission operation?

Mr. McCreery: I object to this line of questioning. It seems to be trying to make some kind of a test of accounting ideas. This witness has stated what has been done on

these books. His qualifications as an expert accountant are not here involved. He is reflecting what the books show and I submit that the testimony is improper in the course it is now taking.

Mr. Lange: I will withdraw that question.

Q. I will ask you whether in connection with the preparation of this exhibit or in connection with the preparation of any similar accounting exhibit, you have followed the Federal Power Commission's Uniform System of Accounts for the Natural Gas Business.

A. I believe this exhibit is in conformity with it.

Q. It is? Do you know what the Uniform System of Account provides in connection with those particular items of operating and maintenance expense?

A. I don't just follow you there, Mr. Lange.

Q. Do you know what the Uniform System of Accounts for natural gas companies, as promulgated by the Federal Power Commission provides with reference to setting up of items of operating and maintenance expense attributable to distribution operations as distinguished from distribution?

A. I distinguish between them.

Q. You do?

A. Yes.

Q. Did you follow that Uniform System of Accounts in the preparation of this earnings statement?

A. It wasn't necessary. We didn't treat this as being distribution property.

Q. In that respect you didn't follow the provisions of the Uniform System of Accounts?

A. We have no distribution company so we have no need for following that part of it.

The Trial Examiner: We will stand in recess until 2:00 o'clock this afternoon.

(Whereupon, at 12:30 o'clock, p. m., a recess was taken until 2:00 o'clock, p. m., of the same day.)

Afternoon Session, 2:00 P. M.

The Trial Examiner: The hearing will be in order.

Whereupon H. P. DAVIS the witness on the stand at the time of recess, having been previously duly sworn, resumed the stand and testified further as follows:

Recross Examination (Continued)

By Mr. Lange:

Q. Mr. Davis, at the time the hearing recessed at noon, the matter of the proper classification of operating and maintenance expense under transmission operations was at issue.

A. That's right, I believe.

Q. And you stated that you followed the Commission's uniform system of accounts classification for natural gas companies?

A. That's right.

Q. You did?

A. Yes.

Q. And considered that this item of expense covering meter and regulator stations should be included in transmission operations?

A. That's right.

Q. You say you are familiar with the uniform system of accounts?

A. I have been through it a number of times, yes.

Q. I direct you to Page 51, Paragraph 16, headed: "Transmission and Distribution Plant:"

"For the purpose of this system of accounts:

"A. 'Transmission System' means the land, structures, mains, valves, meters, boosters, regulators, tanks, compressors and their driving units and appurtenances and other equipment used primarily for transmitting gas to a particular municipality or distribution system. The transmission system begins at the outlet side of the valve and the connection between the gathering lines or other source of supply and inlet to the transmission compressor stations or other gathering terminals and includes the equipment

at such connection that is used to bring the gas to transmission pressure, * * *"

A. That's right.

Q. (Continuing) "* * * and ends at the inlet side of the equipment which meters or regulates the entry of gas into the distribution system."

What have you got to say to that last clause, "and ends at the inlet side of the equipment which meters or regulates the entry of gas into the distribution system."?

Mr. McCreery: At this point I object. It is wholly immaterial; hasn't anything to do with the issues in this case. This system has been set up and there are other—I refer also to Page 53 and to Pages 65 and 66, but it is wholly immaterial in this proceedings how these expense items are set up, whether in strict accord at this time with the system of accounts or not. These accounts are to be set up within a certain period under the rules effective January 1, 1940. This account dates back to a time prior to January 1, 1940, so that the thing is wholly immaterial to any issue in this case whether it happens to be the particular construction of these rules that counsel believe in or some other construction. It doesn't make any difference whether it is under this system of accounts or not, at this time.

Mr. Lange: Mr. Examiner, first of all, the earnings statement that we are discussing at present is for the twelve months ending September 30, 1940.

Mr. McCreery: Which is a part of the year preceding the effective date.

Mr. Lange: He has stated that he has followed the uniform system of accounts and is familiar with it and has applied it. I am just testing his knowledge of that and seeing whether he did actually apply it.

The Trial Examiner: The objection will be overruled.

Mr. Lange: Now, will you read that question back to the witness, please?

(The record referred to was read by the reporter, as set forth above.)

The Witness: I don't believe there is much support for that ruling there that it should end at the inlet side. I don't believe there is a gas company in the country that doesn't meter their own gas. Consequently, it doesn't belong to the distributing company until it passes the meter.

By Mr. Lange:

Q. Then you disagree with the provision as it here applies?

A. I do; yes.

Q. And, of course, then, you didn't follow it, either?

A. Well I couldn't. In my judgment I couldn't.

Q. Now turning to your earnings statement for the twelve months—the continuation of your earnings statement for that twelve months ending September 30, 1940, still under "Operation and Maintenance, General Expenses," the first item of "Executive Salaries," what salaries do those include?

A. That includes only the manager.

Q. The manager's salary?

A. Yes.

Q. And who is the manager?

A. Mr. Shortess.

Q. And the item of "Legal Expenses," what does that include? Have you got—

A. I have already furnished Mr. Smith a detailed statement of that, I believe.

Q. What are the items that go into making up that $5,357.90 in that item as it stands here?

A. This is probably an accrual item. We pay out certain legal expenses, perhaps in advance or afterwards, but we accrue an estimated amount monthly, and this is probably the amount to compensate for that accrued during that period.

Q. The amount accrued?

A. Yes.

Q. What do your working papers show as to the items that have accrued to make that sum?

A. I don't know whether they show it just that way or not, but I will say that it is principally a retainer paid to our legal firm plus some small expenses they may have incurred.

Q. Well, if you have your working papers there, you can give it to us for the record.

A. I don't seem to have the detail on that, Mr. Lange.

Q. Do you have that detail that you can get and supply for the record?

A. I can secure it, yes.

Q. Very well. That includes a breakdown of that total item?

A. How we arrived at it, yes, sir.

Q. Yes. Now, your item of "Advisers Service Expense," $3,216.19. How do you arrive at that figure?

A. Well, I'll say all of it is monthly charges rendered by the Advisory company as our participation in the association.

Q. Petroleum Advisers, Inc.?

A. Yes.

Q. How is that prorated?

A. Their method is based on a percentage of the total revenue of all the associated companies.

Q. Total revenue of all associated companies?

A. Yes.

Q. Now, in other words, Colorado-Wyoming's proportionate revenue to that total?

A. That's right.

Q. Is used, and then you get your prorated amount?

A. Yes.

Q. All right, what other companies go into—strike out.

What other companies total revenues are computed with Colorado-Wyoming Gas Company to get your proration figure?

A. I can't tell you that offhand. That relates to the statement which you asked me to get before of the companies associated.

Q. Will you get that information?

A. That will be obtained, yes, sir.

Q. And let us have it for the record.

Mr. McCreery: Well, Mr. Lange, that contract will come in, too, and then perhaps you can make your inquiries along this line with the contract in evidence. It is not in evidence yet.

Mr. Lange: Yes.

The Trial Examiner: That is, your service contract will come in evidence, Mr. McCreery?

Mr. McCreery: It will be offered in evidence, yes, sir.

Mr. Lange: Will this on its face reflect the names of the other companies that also participated, upon which the accountant arrives at his proration figure?

Mr. McCreery: I can put that contract in now if you want it.

Mr. Lange: I think it more logical—or, rather it might save time.

The Trial Examiner: It will be marked for identification as Exhibit No. 106.

(Exhibit 106, Witness Davis, marked for identification.)

Mr. McCreery: May I interrupt the examination for just a second and ask a few questions?

Mr. Lange: Yes.

Redirect Examination.

By Mr. McCreery:

Q. Mr. Davis, I hand you Exhibit No. 106. Will you state what that embraces?

A. That is a copy of the Management Agreement formerly in effect, dated August 1, 1929, and has been superseded by a Service Contract dated January 1, 1938 with Petroleum Advisers, Inc.

Q. Are the contracts as set forth in the exhibit certified by you as secretary of the company in the form as they appear on the minutes of the company?

A. I certified these to be certified copies.

Mr. McCreery: Mr. Examiner, I now offer Exhibit No. 106 subject to any verification as to errors.

Mr. Lange: Yes, subject to verification. No objection.

The Trial Examiner: Exhibit No. 106 will be received.

(Exhibit 106, Witness Davis, received in evidence.)

Recross Examination.

By Mr. Lange:

Q. I don't find the names of these other companies in this contract, that is, those companies with whom you prorate that item so that you can arrive at the $3216 item that appears in your operations and maintenance expense.

A. No, they don't come in the contract.

Q. You will get a list of those companies?

A. It is separate information.

Q. Isn't there also in connection with that the so-called stock subscription agreement in effect between those several companies?

A. That is our membership, yes.

Q. Is that in the form of an agreement?

A. Yes.

Q. And that includes all of those companies that entered into this proration of the total amount?

A. I am not sure that they are mentioned on there.

Q. But they are the same ones, aren't they?

A. Yes.

Q. Do you have that available?

A. I can get it.

Q. You can get a copy of that for the record?

A. Yes.

Q. Now, this item of $3216.19, can you give me the exact mechanics that you utilized in arriving at that figure?

A. I don't compute the figure as it is billed to me from the service company.

Q. Oh, the Petroleum Advisers, Inc. bill that figure to you after they have computed it?

A. That is right.

Q. Do you have any figures available to check the accuracy of their computation?

A. No, I am not in a position to do so. They have all the figures there.

Q. They just submit it to you for entry on the Colorado-Wyoming Gas Company's books, the prorated part—

A. That is right.

Q. —applicable to Colorado-Wyoming Gas Company, and you make that entry when they submit the figure?

A. Right.

Q. Now, what other items of expense in that column are prorated items?

A. You mean in this same figure, this $3216?

Q. Well, there isn't any other proration in that figure, is there?

A. No.

Q. In that column?

A. There is no other proration. Everything else is a direct charge from some source.

Q. Not any one of those items in that column is a prorated item of another item?

A. No.

Q. Or are those appearing on the preceding pages, the preceding portions of operation and maintenance?

A. No.

Q. Now, this item of Taxes under Operation and Maintenance, General Expenses, $33,439.37, what does that include or what does it consist of?

A. It is principally state and county property taxes.

Q. State and county property taxes?

A. Yes.

Q. What else? You said "principal."

A. I may have it broken down here. I don't seem to have it here, but I could give you the principal items from my memory.

Q. All right.

A. The state and county property taxes are the most important and it is the bulk of that sum. We have state income tax—

Q. Colorado state income tax?

A. Colorado state income tax.

Q. There is no state income tax in the state of Wyoming?

A. No state income tax.

Q. All right, continue.

A. There is capital stock tax, state corporation taxes, license fees, state sales tax, and social security taxes.

Q. What portion of that total of $33,439.37 consists of Colorado state income tax?

A. A little less than ten per cent, I would say.

Q. You don't have the exact item?

A. It is roughly less than $3,000.

Q. But you can get the exact amount of that item?

A. Yes.

Q. For this period for the record?

A. Yes.

Q. Now, then, I notice following Net Earnings from Operation the computation you have for the item of Federal Income Tax, $25,388.13. Why is it you didn't also have the Colorado state income tax appear at that portion of your earnings statement?

A. Federal income taxes are imposed after all other deductions from income.

Q. After all other deductions from income?

A. Yes.

Q. What about Colorado state income taxes?

A. Well, that likewise applies, but we don't treat it that way on this earnings sheet.

Q. Well, isn't that unusual? Wouldn't it be just as applicable to those state income taxes as to the Federal income tax?

A. It is a minor item and we don't set it up separately.

Q. But as a matter of accounting that is where it would properly be, with the Federal income tax?

A. Not necessarily an accounting item. The Federal income tax could be included up here with the other taxes.

Q. That is true, but since you treated the Federal income tax like this, also for uniformity, you would want to treat the state income tax likewise?

A. Not necessarily.

Mr. McCreery: It is applicable only to part of the company's income.

Mr. Lange: It is whatever the statute reads it would apply to. However, I understood him to say that both taxes were similarly applicable. I just wanted to know why his method is different in his operating statement.

The Witness: There is no particular reason except that we consider that a minor item and just a part of our general taxes rather than a special item.

By Mr. Lange:

Q. But the accounting practice would very readily justify and support the placing of the Colorado income tax with the Federal income tax on this operating statement?

A. If you chose to do it that way.

Q. Then it would be good accounting?

A. Either way would be good accounting.

Q. Will you get that exact item out of the $33,439.37 so we can have it for the record?

A. Yes.

Mr. McCreery: Do you want the breakdown of the rest of the taxes or just the one item?

Mr. Lange: Just the one item, the Colorado state income tax out of that $33,439.37 item.

Q. On this same earnings statement you have the item of $10,816.89 covering the regulatory commission expense, don't you?

A. Yes.

Q. Do you have a breakdown on that item?

A. I believe I do. My breakdown doesn't happen to be on that same twelve months period. It commences about January 1939 and comes down to September 30, so it has some other items in there.

Q. You do have a breakdown covering the total as reflected in this earnings statement, don't you?

A. Yes. In doing a little arithmetic I could arrive at it.

Q. Can you do that now? If you can it will expedite the matter rather than waiting until we get it later. Do you want to compute that later, Mr. Davis? If you do, you can.

A. With the figures I have available I don't seem to be able to strike that exact amount because these are set up in the order that they came in while the exhibit is based on months.

Q. You can later give us the breakdown that covers the items—rather, that embraces all of the items making up this $10,816.89?

A. Yes, sir.

Q. And also at the same time give us the items that go into the Regulatory Commission Expense charge for the

previous operating period. This is the operating period for the twelve months ending September 30, 1940, isn't it?

A. Yes.

Q. It begins with September 30, 1939. Do you have it for the previous twelve months or for whatever previous calendar period you have?

A. Well, it starts back in 1939, about in March.

Q. About March?

A. Yes.

Q. Can you give us the total from that time on?

A. All right. The total as I have it here is services and expenses on valuation work, $9,577.05.

Q. Who was that payable to?

A. That was paid to various people.

Q. Do you have a list of the payees to whom that was paid?

A. Not in detail except as to who the money went to. A large number of the charges are to Petroleum Advisers, Inc. for services of employees whom we obtained from them to work on this valuation.

Q. During that time they devoted their entire time to that work?

A. Yes.

Q. Well, do you have the complete information from March down through September 30, 1940? Do you have all items that have gone into the regulatory expense—the Regulatory Commission Expense?

A. Yes.

Q. And is the total broken down?

A. The total up to that point is $18,702.21 and I have divided it this way: Services and expenses on valuation, $9,577.05—

Q. Did that go to Petroleum Advisers, Inc.?

A. Well, it went to various people of which the largest amount went to Petroleum Advisers, Inc. It was not all in one sum, but at various times. Some went directly to employes which we hired ourselves and put on that work.

Q. For that particular work only?

A. For that particular work only. They were engaged solely in that work. Then we have $7500 for legal expense.

Q. Who was that payable to?

A. It was a retainer to our attorney for preparing this case.

Q. Who is your attorney?

A. Lee, Shaw & McCreery.

Q. Lee, Shaw & McCreery?

A. Yes.

Q. What other item goes into that total?

A. Miscellaneous expense is listed here as $1625. I think that is probably for printing, stationery and telegrams and so on. There are no large items.

The cost of cleaning 18 inspection holes *at* here on the pipe line—81 inspection holes, I meant to say.

Q. Is that also included in that?

A. $1,080.

Q. Who was that work done by?

A. It was done by a contractor that we obtained.

Q. What is the name of the contractor?

A. The Pioneer Construction Company.

Q. The Pioneer Construction Company?

A. Yes.

Q. Where are they located?

A. In the Denham Building.

Q. In Denver?

A. Yes.

Q. Was that under written contract?

A. Yes.

Q. Do you have a copy of that?

A. No, I don't have a copy of that.

Q. Do you have it in your file?

A. I believe we still have it.

The Trial Examiner: Was that just for the purpose of digging the hole and restoring it to its former condition.

The Witness: That was for digging the holes and restoring them to their former condition.

By Mr. Lange:

Q. Was that particular part of the work let out on bids?

A. Yes.

Q. It was?

A. Yes.

Q. And when was that work done? Approximately what month or months was the work done?

A. Approximately in the fall of 1939.

Q. Approximately in the fall of 1939?

A. Yes.

Q. About when?

A. It was about September.

Q. 1939?

A. Yes.

Q. That includes all Regulatory Commission Expense down through September 30, 1940?

A. This $10,816.89 does.

Q. And is their any--strike that.

You have got this regulatory commission expense under your operation and maintenance expense in your earnings statement for that twelve months ending September 30, 1940.

A. Yes, sir.

Q. That isn't the same character of expense incurred as the other expenses in that column, is it?

A. No, we hope it is a non-recurring expense.

Q. It is an ordinary accounting practice, so-termed, regardless of what your hopes are?

A. Well, this is my first experience under the commission. I don't know how they ordinarily treat it.

Q. Well, how would you ordinarily treat it in accounting practice?

A. I would take it in my stride and get rid of it.

Q. All in one twelve months period?

A. Take it as it came in, yes.

Q. That item of regulatory commission expense, was all of it incurred in connection with the present proceedings?

A. Yes, that and our expectation of having to comply with other requirements of the Commission.

Q. Well, was there any part of this attributable to anything—strike that.

What part of this regulatory commission expense, then, was *attirbutable* to other matters other than this rate case?

A. That would be kind of hard to say offhand. I would say that it was largely due to the rate case. However, in

connection with the work of preparing the case we expected to arrive at some other figures which we would use in complying with the Commission's reclassification order.

Q. Well, what expense, if any, have you incurred in connection with that?

A. Well, that would be hard to prorate that, I would say, because the work was being carried on as one unit; that is, we expected to obtain at one and the same time both answers.

Q. I see. Well, over what period of time was that work carried on?

A. Almost the entire period. We started that work back in June 1939.

Q. And has it been completed?

A. No.

Q. Well, how far has it gone along? How much more is there to be done?

A. Oh, approximately sixty per cent complete.

Q. Sixty per cent completed?

A. Yes.

Q. Well, what proportion—

Mr. McCreery: Completed or to complete?

The Witness: Sir?

Mr. McCreery: Completed or to complete?

The Witness: Now completed.

Mr. McCreery: Sixty per cent?

The Witness: Yes.

Mr. McCreery: I wanted to identify which way it went.

By Mr. Lange:

Q. And you have attempted to ascertain approximately what proportion of the total that you have set up for regulatory commission expense is attributable to the completion of that 60 per cent of work in connection with the Commission's other requirements?

A. I don't know if I just get that, but I will give you a rough figure if that's what you want.

Q. As near as you can approximate it.

A. I don't believe I can give it to you as a separate item, but making an estimate of what the trial of this case plus this additional expense, if any, will cost us in the neighborhood of an additional $25,000.

Q. $25,000.

A. Yes, possibly a little more than that. I can't tell at this stage.

Q. What employes did you have to put on to do that work?

A. Well, at the present time we have three employes engaged solely in that work.

Q. What character of work do they perform?

A. They made a complete inventory of the plant and they are now in process of reconciling that into units and pricing units.

Q. Although you say that already sixty per cent of it has been completed and is included in that $18,000 item of regulatory commission expense, that forty per cent to be completed would be more than this total?

A. No, no. I told you I was lumping the cost of this trial—

Q. All of it together?

A. Yes. I am just making a guess.

Q. In other words, the total that is now $18,000 would eventually be around $25,000?

A. No, eventually between $40,000 and $50,000.

Q. Between $40,000 and $50,000?

A. Yes.

Q. Well, then, as I say, you have already completed sixty per cent of that work together with all of this work in connection with the present rate case. All of that cost you say is around $18,000?

A. At September 30th.

Q. That's right; then you say that the remaining forty per cent of this other work that would be attributable to the Commission's—to putting into effect the Commission's reclassification requirements would cost you $25,000 more?

A. No. That portion of the work possibly wouldn't exceed six or seven thousand dollars, we'll say.

Q. Six or seven thousand dollars?

A. I told you I was lumping the cost of this case in the 25 or 30 thousand.

Q. In other words, to complete the matters aside from this rate case would cost you around six or seven thousand dollars?

A. Some such amount.

Q. Then you have computed an approximate additional amount for the completion of this rate case which has not yet been incurred?

A. It is in the process of incurrence, yes.

Q. And you haven't anything definite but have only approximated that?

A. I can only make a more or less guess at it, based on what the services are going to be.

Q. I see. These employes that you just named that were put on this matter of the Commission's—let's see, you named taking the inventory of the properties?

A. Yes.

Q. Where were they from?

A. They are from the Valuation Department.

Q. Of Petroleum Advisers?

A. No, Electric Advisers.

Q. Electric Advisers, Inc.?

A. Yes.

Q. And now that is the third group of the Advisers, isn't it?

A. Yes.

Q. Yes, Petroleum Advisers, Inc., Gas Advisers, Inc., and Electric Advisers, Inc.

A. Yes.

Q. In other words, they were broken up into those three groups after the Holding Company Act went into effect?

A. They each have their own sphere of action, but their services are available to each of—

Q. In other words, that original group before the companies were divided into three groups was Henry L. Doherty & Co.?

A. I think so.

Q. And these three men that were making the inventory of your properties were from Electric Advisers, Inc.?

A. Two of the men. One is an employe which we engaged on our own hook.

Q. Well, why would they have men from Electric Ad-

visers, Inc., rather than from Gas Advisers, Inc., on this kind of work?

A. I don't believe Gas Advisers, Inc. maintains a Valuation Department.

Q. They don't?

A. I don't think so.

Q. Your operations are exclusively natural gas, aren't they?

A. Yes.

Q. You have no electric properties in Colorado-Wyoming Gas Company's system?

A. No, we don't.

Q. It is your understanding they have no valuation engineers in the Gas Advisers, Inc.?

A. That's my understanding.

Q. That is why you had these men from—

A. They have no department functioning as a valuation department. That's the way I understand it.

Q. And did these three men do any work in connection with this present rate case?

A. Yes, since the first of November. They have assisted in preparing certain exhibits, and so forth.

Q. And on what basis were they employed? What basis of pay to do that work?

A. They are paid by the Advisers company who in turn bill us for their services.

Q. On a certain basis?

A. Oh, I suppose, the actual pay that they receive, at cost.

Q. Don't they have a specific contract with you on that?

A. They furnish us with any employes we may need at cost.

Mr. McCreery: Those terms are all set forth in the contract as to how the costs are determined. It is all in the contract. The whole thing is set out in it.

By Mr. Lange:

Q. What other employes of Electric Advisers, Inc., or of Petroleum Advisers, Inc. have been on this particular work, other than the rate case work?

A. On the valuation work, you mean?

Q. No, any other requirements that you say you are trying to comply with, or that you are now complying with.

A. Oh, we are making an effort to comply with this so-called 2-D paragraph, and one of the answers we expect to get out of this valuation is our reclassified plant figure. The thing is sort of dovetailed together. There is no separation on it.

Q. And are they working on any other phase of those problems?

A. No.

Q. And are any of your regular employes working on that work doing anything in connection with that work?

A. Not regularly. We participate in it to a large degree, of course.

The Trial Examiner: Are you speaking now of the reclassification, now, Mr. Lange?

Mr. Lange: Yes.

Q. You say some of your regular employes are also engaged in part of that work?

A. Well, as needed, yes; that is, it is necessary that they call on us for various things, you know, from time to time. We take up perhaps a good many hours during the course of affairs assisting them.

Q. And are any of your regular employes participating in any of the work in connection with this particular rate proceeding?

A. The same principle applies there. However, if you mean are we charging any of their time against it, I'll say no.

Q. You are not?

A. We are not.

Q. Are there any other than the three groups you mentioned, the Electric Advisers, Inc., the Gas Advisers, Inc. and Petroleum Advisers, Inc., that are rendering those several services to the companies? Are those the three service companies?

A. Yes. However, we only have relations with Petroleum Advisers. These other companies are called in by them.

Q. And the Petroleum Advisers is the one with whom you have your contract?

A. That's right, yes.

Q. And if they don't have anyone in their organization that can furnish the particular service, they will call on any one of the other two companies to supply the necessary service?

A. That's right.

Q. And do all three companies have their offices in New York?

A. Yes.

Q. Well, where do they have their headquarters?

A. In 60 Wall Street Tower.

Q. Wall Street?

A. Yes.

Q. And that's the Cities Service group there?

A. Yes.

Q. Now, I notice that your balance sheet as well as your earnings statement in this Exhibit No. 105 covers the twelve months operating period ending September 30, 1940, but your statement of gas sales as well as your gross revenue from sales statement, each of those statements ends with the calendar year 1939. You haven't any figures in each of those statements comparable for the accounting period of September 30, 1940, have you?

A. No. Those exhibits were based all on complete calendar years while this earnings statement is for the twelve months ended—

Q. And this gas sales statement attached to the exhibit, shows that it is on a contract pressure base, so there are varying pressure bases that enter into that?

A. That's right.

Q. Mcf. in gas sales. In other words, each of the contracts there set forth may have a different pressure base, or putting it the other way, there is no uniform pressure base reflected?

A. No.

Q. Now, one more question with reference to this:

You designated Mr. Wedum as Assistant Secretary for the Board, this morning?

A. Yes.

Q. What other positions, if any, does he hold with the companies?

A. That is the only position he now holds.

Q. As Assistant Secretary for the Colorado-Wyoming?

A. Yes.

Q. Does he hold any other positions with any of the other companies?

A. I couldn't tell you a thing about that.

Q. Can you ascertain that for us?

A. I doubt if I can. It is not at my command.

Q. You can make the inquiry about it, can you?

A. I can ask for it, yes.

Q. Very well. He is the assistant under you, isn't he, in this company?

A. Yes.

Q. Will you ascertain what positions he holds with any of the other companies?

A. I'll be glad to inquire.

(Vol. 24, 3302-3377.)

* * * * * *

Q. Inquiry was made of you, Mr. Davis, also as to the character of your inclusions in your transmission operation of certain items, particularly measuring stations and meters. I will ask you if in considering the uniform system of accounts of the Federal Power Commission you considered certain portions of that governing book as put out effective January 1, 1940 dealing with that matter?

A. I have, yes.

Q. Can you refer to the book and indicate to the Examiner the portions that you have considered in the results you arrived at in setting forth these transmission operation and maintenance charges?

A. Well, the classification—or the portion of it which we complied with which we believe is the proper one is set forth on Page 65, Item IV, "Transmission Plant." With your permission I'll read the item:

"Account 351. Land and Land Rights.

"A. This account shall include the cost of land and land rights used in connection with transmission operations. (See Gas plant instruction 9.)

"B. This account shall be subdivided as follows:
351.1 Land.
351.2 Land Rights.

"Account 352. Structures and Improvements.

"A. This account shall include the cost in place of structures and improvements used in connection with transmission operations. (See Gas Plant Instruction 10.)

"B. This account shall be subdivided as follows:
352.1 Pumping Station Structures.
352.2 Measuring and Regulating Station Structures.

"Account 353. Mains.

"A. This account shall include the cost installed of transmission system mains.

"B. The record supporting this account shall be so kept as to show separately the cost of mains of different sizes and types of each tunnel, bridge, or river crossing."

The items under this division are:

"1. Drip lines and pots.

"2. Excavation, including shoring, bracing, bridging, pumping, back-fill, and disposal of excess excavated material.

"3. Municipal inspection.

"4. Pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.

"5. Permits.

"6. Pipe coatings.

"7. Pipe and fittings.

"8. Pipe laying.

"9. Pipe supports.

"10. Protection of street openings.

"11. Valves where not installed in pits.

"Account 354. Pumping and Regulating Equipment.

"A. This account shall include the cost installed of pumping, regulating, and measuring equipment, including all transmission property other than land, structures, and mains."

Q. You are now reading from Page 66?

A. Page 66.

(Continuing) "B. This account shall be subdivided as follows:

354.1 Pumping Station Equipment.
354.2 Measuring and Regulating Station Equipment."

The items under this are:

"1. After-cooling equipment and accessories.

"2. Boosters.

"3. Compressors.

"4. Driving units for items listed herein.

"5. Excavation, including shoring, bracing; bridging, pumping, back-fill, and disposal of excess excavated material.

"6. Foundations and vaults for items listed herein.

"7. Meters located on lines.

"8. Odorization equipment.

"9. Pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.

"10. Piping and fittings for equipment.

"11. Pressure indicators.

"12. Valves and valve pits.

"13. Governors or regulators.

"14. Office furniture and equipment."

Q. Mr. Davis, in considering the portion of this booklet which you have just read and in view of the language, did you consider it proper to include metering and measuring equipment under the designation which you used?

A. I felt that the language was quite plain there.

Q. And is it not also a fact that the same types of equipment might equally be in a distribution system?

A. It could be.

Q. In fact, does the Colorado-Wyoming Gas Company have any distribution system whatever?

A. We do not.

Q. It is purely a transmission system?

A. Right.

(Vol. 24, pp. 3378-3382).

* * * * *

By Mr. McCreery:

Q. Mr. Davis, you have previously testified and have been sworn?

A. Yes, sir.

Q. On your previous examination you were asked to produce certain additional material and I hand you a document marked Exhibit 113. I will ask you, Mr. Davis, if you will state what is included in the exhibit marked 113?

A. I offer here a copy of the gas purchase contract with the Goodstein Pipe Line Company for Berthoud, Colorado field, and assignment of same by Myer Goodstein to Kir-Well Oil Company; also included herein is a contract for digging pipe line inspection holes by the Pioneer Construction and Engineering Company, and a copy of a subscription agreement with Petroleum Advisers, Inc.; also a detail of expenses charged to Colorado-Wyoming Gas Company by Petroleum Advisers, Inc. for the year 1938 and 1939, and a list of the member companies in Petroleum Advisers, Inc. as of April 1, 1938.

(Exhibit 113, Witness Davis, marked for identification.)

Mr. McCreery: These various documents included within the exhibit being those asked for by counsel for the Commission, I offer this exhibit in evidence, subject, however, of course, to the right to compare the document with the original copies which are in our hands.

Mr. Lange: No objection.

The Trial Examiner: Exhibit 113 will be received.

(Exhibit 113, Witness Davis, received in evidence.)

By Mr. McCreery:

Q. Mr. Davis, I hand you a document marked Exhibit 114. Will you state what that exhibit contains?

A. This is the supplemental detail to Exhibit 105 in re earnings statement for twelve months ending September 30, 1940.

(Exhibit 114, Witness Davis, marked for identification.)

By Mr. McCreery:

Q. The detail there included, is that detail requested by counsel for the Power Commission?

A. Yes, sir.

Q. In connection, Mr. Davis, with Exhibit 113, I believe you made a statement as to the assistant secretaryship of the Colorado-Wyoming Gas Company. Do you wish to make a correction in that previous testimony as indicated in the document described as detail of expenses charged to Colorado-Wyoming Gas Company by Petroleum Advisers, Inc., 1938 to 1939?

A. Yes, I wish to correct my statement on that.

Q. And what portion of the language in the exhibit do you wish to make such a correction?

A. The last paragraph. I'll read the last paragraph on Sheet C:

"None of the above individuals held positions in Colorado-Wyoming Gas Company in 1938 or 1939. Recently Mr. C. E. Weger became assistant treasurer and Mr. D. F. Leary became assistant secretary both, however, without compensation by Colorado-Wyoming Gas Company"

Q. As read, that constitutes a correction of your previous testimony?

A. Yes.

Q. Did you also state previously that the stockholders meetings had been held in New York?

A. I believe I may have said that. If so, it was wrong, because they are invariably held in Dover, Delaware.

Q. That is the state of incorporation of the company?

A. Yes.

Q. So in that respect, if you did state New York, you wish to have the record corrected?

A. I do, yes.

(Vol. 26, pp. 3653-3655.)

* * * * *

Company Exhibit No. 115 (Appendix this Record).

Company Exhibit No. 116 (Appendix this Record).

(b) *Operations, 1939-1949* (Ex. 115).

H. D. Hancock, for the Company, presented Exhibit 115 (See Appendix) which he described as follows:

"The operations of the company projected in Exhibit 115 to the year 1949, beginning with actual data in 1939 and the first ten months of 1940, shows classified sales in M.c.f., gross earnings to be realized therefrom, operation and maintenance expenses, and taxes, including Federal income tax, and the amount available for reserves and return.

"The figures as projected have been arrived at after careful consideration of all relevant elements.

"The volume of sales for each year for each customer has been based on an analysis and appraisal of present and expected markets and trends, including consultation with the customers of the company as to their anticipated requirements.

"Emergency conditions and economic depressions or booms, being entirely speculative, have not been considered, and the entire projection has been based on the present contract purchase prices of gas by the company, and the various sales prices thereof which are now charged to its customers.

"Expenses, including operating cost, maintenance cost, and general taxes, have been predicated upon the company's actual experience in the past and upon considera-

tion of the effect of anticipated changes in the future. Federal income taxes have been computed at the present applicable rates and do not reflect any amount for probable, and almost certain early, additions to the total of such Federal income taxes, resulting from increase in the tax rate or the application of additional forms of taxes.

"The resulting earnings available for reserves and return in this exhibit reflect the extent of the earnings which it is believed the company can reasonably expect to receive from year to year during the period covered by the study.

"No annual amortization or retirement reserve expense can be determined, due particularly to the entire absence of factual data with respect to the expected life of the gas reserves from which the company derives its supply of natural gas by purchase from the Colorado Interstate Gas Company (except as to an inconsequential amount purchased elsewhere)."

(Vol. 26, pp. 3660-3662.)

Upon cross-examination, the witness stated that he had commenced the actual compilation of the projections contained in the exhibit about three weeks prior to the time the testimony was given. He stated that, for the purpose of making the projections, he studied indicated trends of customers, probable sales and business conditions in the cities where gas is sold at the "city gate" for "resale." These cities included Cheyenne, Greeley, Boulder, Longmont, Loveland, Golden and various smaller towns. All of the communities are served by affiliated companies except Greeley and the customers served by Highway Gas Company. He stated that the inquiries made were for the purpose of obtaining the population growths trends, the extent to which customers use house-heating, the quantity that house-heating customers could be expected to use, and similar inquiries as to the commercial space heating in each of the cities. The inquiries also included industrial sales (Vol. 26, pp. 3662, 3663).

The witness stated that a classification was made in con-

nection with the estimated future volume of sales for domestic resale, as compared with industrial resale, in Cheyenne and Greeley. The cities served by the Public Service Company of Colorado were consolidated as a whole between domestic and industrial classifications (Vol. 26, p. 3664).

Upon further questioning, the witness stated that there was very little reason to estimate substantial changes in the sale of gas to direct industrial customers. There were, however, slight changes due to estimated loss of business in certain items. The estimate of use by industrial customers becomes static after 1946, largely for the reason that the sale to the Continental Oil Company for use in the Wellington Oil Field, north of Fort Collins, will be discontinued in 1946 upon the expected exhaustion of that field in that year. The gas used in this field is for general oil field operations, including gas for pumping. This information was obtained from the Company by Mr. Thackrey, Superintendent of the Colorado-Wyoming Company. There are nine existing industrial users, and each of them was interviewed. From the interviews at Golden Fire Brick Company, Colorado Portland Cement Company and the Coors Brewing Company, it was learned that they were the only industrial users that indicated an increase in their use of gas (Vol. 26, pp. 3665-3669).

The industrial sales estimate in the exhibit is based upon discussions with the customers as to what they believed their future trends would be. If there was nothing to indicate a change, the most reasonable course in preparing such an estimate as this exhibit is past and current experience, and this basis was used in such cases. The witness stated that all of such customers' consumption fluctuates from year to year. In some years it will be higher and in some lower. The estimate in Exhibit 115 is the average (Vol. 26, p. 3670). The estimate as to volume by each industrial user for each year, as shown in Exhibit 115, was on information, and there was no evidence which would indicate any substantial change, either by way of increase or decrease, and the most reasonable approach would be to estimate, as was done in the exhibit. There would be much more of a haz-

ard, in view of the showing, to make a projection either of an increase or a decrease (Vol. 26, pp. 3671, 3672.)

The witness stated that the period of projection ends in 1949, for the reason that this was the year in which the gas supply contract of Colorado-Wyoming Company, terminates (Vol. 26, p. 3674). In making the estimates in Exhibit 115, the contract pressure base was used (Vol. 26, p. 3675).

Continuing the cross-examination, the witness testified that Colorado-Wyoming Company sells gas to public authorities as follows: Fort Warren, Fort Logan, the Prison Farm and the Denver Water Board. At the two forts mentioned, gas is usually used for domestic purposes. The Denver Water Board uses gas in connection with the operation of the water facilities at Marston Lake plant. The same character of inquiry was made of the officers representing the public authorities mentioned, as in the case of industrials, to determine their use in the future. There were no facts which would indicate that the present defense program would materially affect the forecast as to these customers or the industrials. It might in some instances, for factors may arise beyond either the knowledge or control of the customer (Vol. 26, pp. 3676-3678). There was no information available from the Army officials as to whether or not any increase in the personnel at the Army posts would add to the consumption of gas at those places (Vol 26, pp. 3681, 3682).

The witness was questioned as to the predictions on sale for resale and the reason for the variations shown in exhibit, to which his answer was:

> "The principal factor which increases the sales for resale is the selling of additional house-heating gas; that is, the conversion of customers from the strictly domestic classification to the house-heating classification and that results in a very large increase per customer so converted. The industrial portion of the sale for resale to which you have referred is practically uniform."
>
> (Vol. 26, p. 3684.)

In connection with the sales for resale industrials, no

direct inquiry was made, such inquiry being made through the distributing company, and the information was received from the distributing companies, which had made surveys of their market prospects (Vol. 26, pp. 3686, 3687). The witness stated that the Cheyenne Company estimated no upward trend for industrial purposes. That company makes a continuous industrial survey, an industrial solicitation from day to day and year to year. It had nine industrial customers in 1936 and eleven thereafter. No consideration was given to any new industrial customers there, because none were in prospect (Vol. 26, p. 3688).

Continuing the cross-examination, counsel for the Commission reviewed with the witness the sales to Colorado Portland Cement Company, Golden Fire Brick Company and the Denver Water Board, which were:

	Colorado Portland Cement Co.	Golden Fire Brick Co.	Denver Water Board
	(In M.c.f.	Contract Pressure	Base)
1928	1,298,567		
1929	696,891		
1930	658,590	34,584	
1931	503,548	90,805	
1932	499,544	27,697	
1933	577	16,891	
1934	558,607	26,761	
1935	659,475	49,741	
1936	916,017	73,269	3,109
1937	961,897	77,880	10,298
1938	706,144	72,165	9,991
1939	1,015,502	66,921	9,010
1940*	900,000	45,000	9,258

*10 months actual, 2 months estimate.

Commission counsel inquired from the witness whether the projection of direct industrial use, based on the years 1934 to 1939, should show an increase in the years 1940 to 1945, as compared to the condition reflected in the projection (Ex. 115).

(Vol. 26, pp. 3690-3704.)

It appeared that the ratio of the 1932 sales to the Cement Company to the 1929 sales is 71½%, and, skipping the year 1934, the ratio of the 1934 sales to the 1939 sales is 55%.

In reply, the position of Mr. Hancock was:

"But if you eliminate for the purpose of arriving at those figures a high figure at the beginning of the period and ignore a low figure in the middle of the period, of course you can arrive at any conclusion you want to."

(Vol. 26, p. 3700.)

The witness testified the Cement Company's entire history of use was "up and down", and generally with respect to his predictions testified:

"A. They are made on the basis of an estimated uniform usage because it is impracticable to estimate when the ups will come and when the downs will come. I feel reasonably sure there will be ups and downs, but I don't claim to be enough of a prophet to say when they will occur. In the same manner in estimating the use of gas for house heating purposes, I don't claim to be a weather prophet and I don't attempt to say which winters will be cold and which winters will be warm; so I base the expected use of gas for heating purposes on, we'll say, a 55 or 60-year average, fully realizing that in the period of this estimate that we won't have average weather each year. It might accidentally average one year, but I have a feeling it will vary from the average each year, and we have followed much the same plan in projecting the earnings on the industrial customers.

"Q. And in the same—or did you proceed in that fashion with reference to your estimate on sales to public authorities?

"A. No, that was approached in a different way because the heating element is not present in that sale.

"Q. To the public authorities?

"A. To the public authorities. It is gas being used for cooking purposes, primarily.

* * * * * *

"Q. What about this Water Board's requirements?

* * * * *

"A. By a study of the performance over the past few years, wherein the usage has remained practically constant during all of the full years usage. * * * "

(Vol. 26, pp. 3701, 3702.)

Various officials of the several industrial customers were interviewed as to their estimated future requirements by members of the Colorado-Wyoming Company staff—Shortess, General Manager, Davis, Secretary, and Thackrey, Engineer.

Substantially all of the customers stated that there was no reason to believe that there would be any particular change in their demands for gas in the future.

(Vol. 27, pp. 3707-3715.)

With respect to inquiry of Public Service Company as to expected future requirements of that company to serve Fort Collins, Boulder, Longmont, Loveland and other cities and communities, the witness testified:

"A. There was a general discussion of the various factors which enter into a change in the present amount of gas sold by those companies, those factors including the rate of growth of domestic customers in each of the communities served. By 'domestic customers' I mean customers, generally speaking, who use gas for cooking and water heating purposes, the extent to which the company felt—by 'company' I mean the Public Service Company of Colorado—it could add to the sale of gas for house heating purposes, and how many present domestic customers could be converted to house heating—to the house heating classification, and what the annual consumption of each of these additional customers would be; and the same general character of inquiry and discussion as to commercial heating sales and other forms of commercial sales and the small industrial sales which were made in these distributing centers.

"Q. After that discussion was had and those factors taken into consideration, what was the answer of the Public Service Company to the inquiry?

"A. The members of the staff of Public Service Company of Colorado to which I have referred, gave to the Colorado-Wyoming Gas Company men their opinions on all of the factors which I have recited.

"Q. And did they estimate the future requirements of that company for any year?

"A. Those future requirements were discussed.

"Q. What estimate did the company make?

"A. The Public Service Company?

"Q. That's right.

"A. In general, the estimate presented was in close agreement with the estimate which is reflected in my Exhibit No. 115. In some instances, particularly in regard to the house heating estimates, the figures discussed were slightly reduced on the basis that they were felt by the Colorado-Wyoming Gas Company men to be slightly optimistic. We have found by experience that estimates prepared by the distributing companies, principally by men engaged in the new business or selling branch of the business, are somewhat optimistic. Perhaps that is a characteristic of the salesman to estimate that he can sell a certain volume of a product. He places his sights somewhat higher than perhaps the management of that company would do, and based on past experience in similar matters and in conformance with my own experience in a great many parts of the country and similar discussions, we have felt and I have felt that the estimate of future sales for the purposes just described represent a fair and reasonable estimate of the expectancy.

"Q. Not any of the inquiries were directed to any of the purchasers in writing, were they?

"A. No, sir."

(Vol. 27, pp. 3716-3718.)

The witness was then questioned as to whether or not a reduction in gas rates might increase the volume of sales. The following testimony was given:

"Q. And in connection with that new business in Denver, isn't it a fact that a reduction in rates will increase volumes of sales?

"A. In many instances it will. In certain instances it may not.

. . . . . .

"Q. That's right. Now, relating it to this particular company, wouldn't a reduction in rates increase the volumes of sales?

"A. Generally speaking, I believe it would but not in all branches of the business."

(Vol. 27, p. 3720.)

The witness was then questioned in regard to the new business activity of distributing companies, to which he replied that the new business activity of the Public Service Company was substantial in character and an important branch of the business of the company, and that such activity is devoted to obtaining new customers and to increasing the load of the existing customers. Generally speaking, the ultimate objective of such new business activity is to maintain and increase the load (Vol. 27, pp. 3822-3824).

The witness was questioned by the Examiner as to the percentage of new houses generally and in Cheyenne, which were being equipped for gas heating, and whether or not this was given consideration in the trend for future sales, to which the witness answered that a very large percentage of the new houses were equipped for gas house-heating, and that such fact was considered in making future estimates (Vol. 27, p. 3725).

In connection with "Operation and Maintenance Expenses" (Ex. 115), answering an inquiry as to the method of arriving at the "Purchase Gas Expense" estimates, the witness answered:

"We first arrived at a summation of the amount of gas to be handled by the Colorado-Wyoming Gas Company by separately arriving at the component parts of that volume. First, the amount purchased for resale; next, the amount purchased for direct sale to industrial customers and public authorities; and, third, the amount purchased for company use in the operation of its compressing stations; and fourth, the amount represented by the lost and unaccounted for gas item of the company.

"These volumes were then computed at the contract purchase rates and the amount of money arrived at, which is entered on the gas expense line in Exhibit 115."

(Vol. 27, p. 3726.)

The contract purchase rates mentioned primarily are those set forth in the contract with the Colorado Interstate Company covering purchases for various uses (Vol. 27, pp. 3726-3728).

The witness was then asked what volume percentage of gas sales under the domestic classification was projected in "Purchased Gas Expenses." The witness stated that for 1939 it would be approximately 50%; for 1940, approximately 55%; for 1941, 54%; for 1942, 55%; for 1943, a little less than 56%; for 1944, a little less than 57%; for 1945, approximately 57%; for 1946, approximately 58%; for 1947, slightly in excess of 58%; for 1948, approximately 59%; and for 1949, slightly in excess of 59%. In the percentages given, the witness related the purchased gas for resale to the total purchased gas (Vol. 27, pp. 3729, 3730).

When questioned as to the percentage of revenues received from "sales for resale," his answer was: "For the year 1939 the revenue derived from sales for resale is 69.9 per cent of the revenue from all sales and in the year 1940 is based on ten months actual and two months estimate, 75.3 per cent" (Vol. 27, p. 3730). The projection of cost of purchased gas in the exhibit was based upon the purchase price thereof as contained in the Colorado Interstate Company's contract and to a very minor extent in the other gas purchase contract (Vol. 27, p. 3733).

(c) *Transmission Operation.*

The witness *Hancock*, upon inquiry explained how he arrived at the estimate of "Transmission Operation," under the general heading of "Operation and Maintenance."

"Transmission operation expense is separated into three general classes of expense, being mains operation, compressor station operation and measuring station operation. Each of these accounts or items of expense

were analyzed as to recent and past experience, and those factors which will affect the various classes of expense during the period of the estimate, taking into account the few changes in expense which arise from changes in classification of expense and from known changes in operating conditions, particularly pertaining to the operation of the new Arapahoe compressing station and to what I believe to be a more extensive operation of the other compressor stations of the company in future years than in past years."

(Vol. 27, p. 3734.)

The total transmission operation in 1938 was $32,514.25; in 1937, $32,664.42; and in 1936, $27,119.69, broken down as follows:

	1938	1937	1936
Mains Operation	$ 4,986.93	$ 5,129.45	$ 3,881.64
Compressor Operation	20,319.22	21,128.04	17,410.98
Measuring Operation	7,208.10	6,406.94	5,825.07

(Vol. 27, pp. 3736, 3737.)

The totals for the years 1939 and 1940 were $35,166 and $35,760, respectively (Ex. 115).

In estimated "Transmission Operation" the increase of $8,010 reflected in 1941 over 1940 was given generally by the witness, as follows:

Transfer in 1940 of expense (2c per M.c.f.) of transporting gas sold to Denver Pressed Brick Company from "Purchased Gas Expense" to "Maintenance Operation," amounting to slighfly in excess of $1,000; added labor in operation of new Arapahoe Compressor Station, $1,680; additional supplies and expenses, including fuel and gas required at that station, $2,320; additional supervision and supplies and expenses, $770; a line walker to patrol the lines of the Company, $1,560, which work previously had been done by men temporarily shifted from the maintenance gang, but due to the increasing amount of maintenance, that is no longer possible (Vol. 27, pp. 3737-3744).

In 1942, the increase of $4,000 in "Transmission Operation over 1941 was broken down as follows: Arapahoe Sta-

tion labor, $1,680; supplies, fuel gas and expense Arapahoe Station, $640; Arvada and Wellington Stations, increased pumping expense, $1,680 (Vol. 27, p. 3745).

In 1943, due to further increased operations at Arapahoe Station, the increase of $3,000 over 1942 represents "the same character of items next previously mentioned" (Vol. 27, pp. 3745, 3746).

In explanation of the reason for the increases in operating costs at Arapahoe Station, the witness stated:

"A. Because of the two additional operators due to the time the operation increases. If a station is operated very infrequently it would only be necessary to have two men in that plant. As the number of units increased, which is reflected also in this estimate, and as the number of hours of operation increased it is necessary to have enough men to perform the shifts that they are required to operate the plant and to occasionally relieve those men during their off time.

* * * * * *

"A. The operating labor in 1942 at Arapahoe station is based as having two full-time men for the year, which doesn't mean that there will be two men uniformly during the year, but the equivalent of two men throughout the year, the balance of the man's time so engaged being charged to other company work that they will be assigned when not on operating duty.

"Q. Then, in so far as the other transmission operation expense is concerned, during those—rather, especially during 1942, that estimated increase is confined entirely to compressor station operation expense?

"A. That is correct.

"Q. In 1943 does that same situation obtain?

"A. The same situation obtains, yes, sir.

"Q. And that also is confined to compressor station operations?

"A. That is correct.

"Q. And for 1944 is it the same?

"A. The same obtains in 1944 and thereafter in regard to labor, but in 1944 and thereafter there will be

further increases in the amount of fuel used at the station as the number of hours operated increases.

"Q. Oh, then, from 1944 on, there will be no increase in labor cost in so far as compressor station operations are concerned, but these increases are attributable to increased fuel cost?

"A. Fuel and other operating supplies.

"Q. For a compressor station?

"A. That is right.

"Q. But in so far as transmission operations are concerned, aside from those attributable to compressor station operation, from 1941 they remain static?

"A. That is right."

(Vol. 27, pp. 3746-3748.)

(d) *Transmission Maintenance.*

Hancock further testified that total transmission maintenance in 1936 was $5,218.28; in 1937 it was $10,990.10; in 1938, $5,315.93; and in 1939 the amount was $5,059.63, broken down as follows:

	1939	1938	1937	1936
Mains Maintenance	$2,298.75	$3,170.97	$8,843.32	$3,234.32
Compressor Maintenance	2,051.11	1,769.08	1,766.12	1,625.52
Measuring Maintenance	709.76	375.88	380.66	358.46

(Vol. 27, p. 3764.)

For the year 1940 the total transmission maintenance was $10,300 (Ex. 115).

Counsel for the Commission then inquired as to the basis for the projected continual increase in "Transmission Maintenance" from 1939 and thereafter—1940 being treated as actual. The cross-examination continued:

"A. The principal basis of the increase in 1941 is because of the plans of the company to overhaul or recondition certain stretches of main lines and branch lines which we now estimate have reached a point where it is desirable and economical to perform that maintenance work.

"Q. Exactly what are the items that go into that figure of an increase—well, for the total figure of $16,000 that you have estimated for 1940?

"A. That increase of $5,700 a year in 1941 over 1940 consists of $4,700 to line maintenance, $750 for compressor station maintenance, and $250 for measuring station maintenance.

"Q. Let's take that first item of line maintenance. What does that contemplate or include? And in connection with that estimated figure for that year, instead of giving us just the increase over 1940, what portion of this $16,000 is attributable by you to line maintenance, rather, just the increases over 1940?"

(Vol. 27, pp. 3748, 3749.)

The witness testified that, of the total estimate of $16,000 for 1941, ordinary line maintenance would be $1,000 (Vol. 27, p. 3749) and extraordinary line maintenance, $10,300 (Vol. 27, p. 3752.)

He defined ordinary maintenance as "the term applied to sundry maintenance of the pipeline system. Take, for example, if a valve would leak and it was necessary to have a man go out and tighten the stuffing box on the valve, but not involving any extensive repairs or reconditioning, * * *" (Vol. 27, p. 3749). As applied to transmission pipeline, he illustrated it as:

"A. The repairing of any damage to the back-fill due to wash by water or land slides or actual repairs to pipe in a moderate amount if there was any leak or there might be damage caused to some line from outside sources.

"For example, during the past two weeks a line has been pulled out of the ground by a contractor working on construction work and that would be classed as ordinary maintenance, the restoration of that line. I make the distinction here between ordinary maintenance and extraordinary maintenance on the basis of size.

"Q Right there on ordinary maintenance, is that the character of maintenance that has been the company's experience heretofore?

"A. Yes, I think that is a pretty fair representation of the experience. * * *"

(Vol. 27, p. 3750.)

"Q. How do you describe extraordinary maintenance as distinguished from ordinary maintenance?

"A. The distinction is usually one of size. By extraordinary maintenance is meant the operation carried on when a section of line is reconditioned. For example, if we had five hundred feet of line in a swampy or highly corrosive ground, it may reach the point that it is no longer economical to continue with temporary repairs.

"Q. Now, I believe you did not, in connection with ordinary maintenance, state, or maybe I didn't ask you, whether ordinary maintenance also included spot welding.

"A. As a general rule it does not. Ordinary maintenance would include putting on a leak clamp, which is a temporary matter and such leak clamp being removed and the defect spot welded at a later time under the extraordinary maintenance program."

(Vol. 27, pp. 3751, 3752.)

"A. And included in the work now being done in 1940 which in the extraordinary maintenance item will amount to approximately $6,000 and most of that work is practically completed, that also including the lines estimated to require that type of maintenance in 1941 and part of 1942.

"Included in that list which will be used, from which to select the lines, to be subject to this type of maintenance, is thirteen hundred feet of 10-inch main line; 8,800 feet of 8-inch main line; 10,500 feet of 6-inch main line; 5,500 feet of branch 6-inch line; 400 feet of 2½-inch line; and 5,000 feet of 6-inch branch line on the Johnstown branch.

* * * * *

"A. It would include the excavation of the line, the lifting of the line from the ditch without removing the pressure from the line, a thorough cleaning of the entire amount of line exposed, the repairing of any defects observed in the line, including the removal of any emergency clamps previously placed on the line, the spot welding of any defects in the line, pits, and so forth, the priming of the line and finally the application of a hot enamel coating to that pipe and then the lowering in the ditch and back-filling, all of the work being done as a general proposition while the line is under pressure.

* * * * *

"Q. Well, if you run into pretty long sections—you have got some pretty long sections of line here, haven't you, all except the 400-foot, and if you should run into a section of that line that was in pretty bad condition after you had exposed it and found that condition, you might find that it would be better to replace certain sections of that line rather than to try to spot-weld it or repair it in that fashion?

"A. Of course, that might be so found, but I don't believe the deterioration will have been advanced to a point where any replacements will be necessary.

* * * * * *

"Q. And in your opinion, from present knowledge, there would not be any replacement necessary in this group at this time or at that time in 1941?

"A. That is my opinion, subject to the statement that there might develop some minor replacements, but I think they would be either absent or very minor in character."

(Vol. 27, pp. 3752-3755.)

In the 1942 program of extraordinary maintenance, in addition to sections of line above detailed, there is also included sections on the Boulder 8-inch and 6-inch lines, the Longmont 3-inch line, Fort Warren and Brighton 2½-inch and 3-inch lines, as well as additional stretches on the lines listed under the 1940 and 1941 heading. In connection with the 1942, as well as the 1941, program, witness believed there was no probability that any portion of the pipe would have to be removed (Vol. 27, pp. 3756, 3757). Pursuant to request of Commission counsel, the witness gave detailed information as to the location of reconditioning operations under the 1940, 1941 and 1942 extraordinary maintenance program (Vol. 28, pp. 3826-3829).

Line maintenance for the year 1943 consists of ordinary maintenance, line moving and extraordinary maintenance of $13,500. For the five-year period beginning during the year 1942 and extending to about 1947, the witness described the "prospective and estimated maintenance" as follows:

"A. * * * On the 10-inch main line, 13,200 feet; on the 8-inch main line, 36,100 feet; on the 6-inch main line, 18,200 feet; on the Boulder 8-inch line, 7,600 feet; on the

Boulder 6-inch line, 6,400 feet; on the Greeley 6-inch line, 5,000 feet; on the Golden 4-inch line, 16,000 feet; on the Longmont 3-inch line, 900 feet; on the Brighton 3-inch line, 5,000 feet; on the Brighton 2½-inch line, 14,400 feet; on the Fort Warren line, 800 feet; on the Cement line, 2,000 feet; on the Johnstown 6-inch line, 7,700 feet.

"The extraordinary maintenance on the foregoing lines will be distributed over the five-year period beginning sometime during 1942 up to about 1947.

"Q. All right, in connection with that extraordinary maintenance during that period, what probability would there be of any replacements of pipe during that work, or that would be carried on, rather, than the repairing or reconditioning of portions of that pipe?

"A. I would not expect a high percentage of replacements to be necessary in these later years. There may be some replacements due to the advanced corrosion as time goes on."

(Vol. 27, pp. 3759, 3760.)

For the years 1948 and 1949, the witness testified the line maintenance will be $20,000 a year, of which $17,800 is extraordinary maintenance. This is a prediction based by an estimate of the expected situation at that time (Vol. 27, pp. 3761, 3762). The foregoing expenses and repairs are predicated entirely on reconditioning operations. If a few feet here and there are replaced, that would be in addition to the reconditioning or extraordinary maintenance expense (Vol. 27, p. 3763). The figures given for the year 1940 cover ten months' actual and the actual figures for the full year "will be very close to that estimate" (Vol. 27, p. 3765).

Pursuant to request of Counsel for the Commission, the witness presented for each of the years 1926 (Partial year) to 1929, inclusive, line, compressor, and measuring maintenance, which ranged from $46 to $620; from $4 to $2,800; and $21 to $200, respectively. This covered the original Fort Collins-Cheyenne System. For the reconstructed and enlarged system for the years 1930 to 1935, inclusive, the same items ranged from $631 to $3,025; $584 to $2,334; and from $4 to $395, respectively. The totals of all three classifications were: $253 for 1926 (partial year); $308 for 1927; $2,002 for 1928; $3,581 for 1929; and for the enlarged sys-

tem—$2,658 for 1930; $5,522 for 1931; $4,483 for 1932; $3,446 for 1933; $2,470 for 1934; and $4,360 for 1935.

(Vol. 27, pp. 3768, 3769.)

In his study reflected in Exhibit 115, the element sought "is how much money would have to be spent for maintenance during each of the years covered by the estimate" and he added "it is to be borne in mind that when a line is selected for maintenance that it is not essential that it be done that particular year. In other words, the line is not in danger of breaking, so there is no emergency condition to meet by prompt action. It is more an orderly program of rehabilitation" (Vol. 27, pp. 3770, 3771).

Between the years 1931 and 1939, there was no substantial increase in the property, the plant and investment account in 1931 being $1,821,171, and in 1939, $1,860,552 (Vol. 27, p. 3774).

With respect to additional construction, *Hancock* testified:

"With the exception of the completion of the Arapahoe station as the second unit for 1941, there is no additional construction contemplated; however, to make that statement plain, I believe I should explain that the loads that are projected in this estimate to 1949 cannot be handled without some additional compressor station facilities some time after 1941. It may be as late as 1945, but I have given no consideration to the exact character or cost of that additional facility or the time when it will be installed. It will be a difficult thing to do but I just want to call attention to the fact that the peak loads represented by the additional business for 1949 could not in my opinion be handled by the facilities which have been described as existing as of 1941."

(Vol. 27, p. 3776.)

(e) *General Expense.*

Under *General Expense*, the witness, HANCOCK testified, that the item "Taxes-General" includes all taxes except "Federal Income Tax", and the increase projected from year to year, excluding also Colorado income tax, was based on the average increase of $1,650 per year during the nine-year period from 1931 to 1940, during which interval as

previously pointed out by the witness there was no substantial change in the plant and investment account of the Company. In 1931, the total taxes, exclusive of Federal and Colorado income tax, was $17,035, of which $16,230 was real and personal property. By 1939, the latter item had increased to $25,353, and in 1940, to $26,924. The basis of these increases was the increase both in the assessed valuation and in the tax rate (Vol. 27, pp. 3773, 3774).

The Colorado general property tax assessed valuation increased from $693,760 in 1931 to $840,610 in 1939, and decreased in Wyoming from $36,586 to $20,180 in the same period. The average mill levy in Colorado increased from .02337c in 1931 to .03047c in 1939, while in Wyoming the rate, in the same period, decreased from .02608c to .02498c (Ex. 119).

The Federal income tax for the year 1939 was computed at the then rate of 16½%, and for the year 1940 and thereafter at the 1940 applicable rate of 24%. Depreciation allowances used in the tax computations, and for no other purpose, are those as approved from year to year by the Bureau of Internal Revenue in connection with corporate income tax (Vol. 27, pp. 3789-3792).

Respecting future general expense, the cross-examination continued as follows:

"Q. With reference to the remaining item under the estimated future general expenses, Mr. Hancock, you have for the year 1940, ten months actual and two months estimated, an increase of some $2,000. What does that represent?

"A. That increase is represented by small increases and decreases in the various items entering into the general expense—other classification, which includes executives' salaries, clerical salaries, legal expense, traveling expense, advisory service fees and expenses, insurance, rent, injuries and damages, regulatory expense, and welfare expense.

"Q. Now, in the year 1941 there is an increase of almost five thousand dollars over and above 1940. What does that represent?

"A. The principal items that increased between 1940

and 1941 are executive salaries, $2,482; legal expense, $600; and clerical salaries, $1,388.

"Q. That column covering Other General Expenses covers a number of items, doesn't it?

"A. It does, yes, sir."

(Vol. 27, pp. 3786, 3787.)

The breakdown of "General Expense" for the years 1939 to 1949, inclusive, is set forth in Exhibit 116 (See Appendix) and in Statement No. 3 "Revised Exhibit 116," of Exhibit 242 (See Appendix).

On cross-examination (Ex. 116), Mr. Hancock testified that Exhibit 116 is a break-down of the general expense item shown in Exhibit 115. The items for 1939 and the first ten months of 1940 are actual, and for the balance of 1940 and for the following years are estimated.

The schedule for increases in executive and clerical salaries was arrived at by H. P. Davis, Secretary of the Company, after consultation with officers of the Company, as to fair compensation, subject to action by the Board. The intended increases will be carried out. Clerical salaries are for action of the management and not the Board. Legal expenses were fixed after consultation with counsel and include annual retainers and all general services (Vol. 28, pp. 3880-3885).

On redirect examination, the witness testified that all items in Exhibit 116 (giving the break-down of figures shown in Exhibit 115) were discussed with the officers of the Company, and figures were carefully prepared which would reflect their considered judgment as to the treatment of the items (Vol. 28, p. 3887).

Q. What other industrial customer had any change in estimated future requirement?

A. The Colorado Portland Cement Company at LaPorte, Colorado is estimated to use during the year 1940, based on ten months actual and two months estimate, 900,000,000 cubic feet, and it is now estimated that in 1941 and thereafter if that company continues to be a customer of Colorado-Wyoming Gas Company, it may reasonably be expected to consume one billion cubic feet per year.

Q. Any other company which may change its require-

ments or that may have different requirements for the future than they have at present?

A. The Coors Company at Golden is expected to use in 1940, based on ten months actual and two months estimate, 15,400,000 cubic feet, and based on our estimate of the future consumption it is believed that beginning in 1941 and continuing thereafter that a fair approximation of the sale to this company will be 18,000,000 cubic feet per year.

The other variations are minor in character, consisting principally of rounding numbers because it is impossible to estimate to a high degree of accuracy due to normal fluctuations in the use of gas by these customers from year to year.

Q. Now, first of all, limiting it to these industrial main lines, isn't it a fact, Mr. Hancock, that any of these industrials would hardly hazard an estimate to a year as far in the future as 1949 as to their particular requirements?

A. Yes, I agree with you that they wouldn't. Our estimate is not based on that. It is based on a discussion with the customer of what they believe their future trends will be, and if there is nothing to indicate a change, the most reasonable course that we could follow in preparing this estimate would be to project it on the basis of present experience.

Q. But not based on any indication that any of these industrial users have made that far in the future?

A. No, except on the general opinions as to volumes that could be utilized in the future. All of these customers' consumption fluctuates from year to year, and while the estimate is predicated on a uniform usage, it is very probable that some years will be higher and some years will be lower, and it is impracticable from a marketing standpoint to definitely predict which of those years will be high and which will be low.

(Vol. 26, pp. 3668-3670.)

* * * * *

Q. Well, isn't that just contrary to ordinary business affairs that they don't remain static?

A. I certainly wouldn't estimate an increase in sales to these customers unless I had some reason for doing it.

and in the absence of that reason and in the presence of information which points to a fairly level continuance of present sales, I would certainly estimate the latter situation.

Q. In the light of your experience, Mr. Hancock, though, do you find that there is any such situation among, particularly among any kind of industrial users that would border on the static over a period of years?

A. I have heard the saying that nothing remains static, but I certainly don't agree with it.

Q. You don't agree with that?

A. Experience does not bear that out.

Q. Not even with reference to an industrial plant?

A. No, sir.

Q. Or with reference to business concerns?

A. Bearing in mind my previous answer that I did not expect these industries to remain static year by year and to buy gas in these exact volumes but that they will have their ups and downs and some years may be low and some high or in some years some industries may be a little higher and others may be a little lower, that the projection represents the most reasonable approach that I know to a total figure for the group as a whole.

Q. But you still are definitely of the opinion that you would be on much safer ground to hazard a static situation or one that remains comparatively static than to hazard an estimated future increase or future decrease?

A. Yes.

Q. And that, over what period of time?

A. Over the period covered by this estimate.

Q. And I notice that that period ends in 1949. Why does it end at that time?

A. That being the year in which the gas supply contract of Colorado-Wyoming Gas Company terminates.

Q. Oh, that is the termination date according to the terms of the contract between Colorado-Wyoming and Colorado Interstate Gas Company?

A. Yes, sir.

Q. And have you made any investigation with reference to the situation as to that termination date as to its actual termination at that time or possible continuance on?

A. No, sir.

(Vol. 26, pp. 3672-3674.)

Q. Now, among those industrials, aren't there any of them that would be affected by the present defense program?

A. I have no reason to believe that that would materially effect the forecast. It might in some instances.

Q. You mean in so far as the industrials listed here are concerned?

A. That would be a possibility, yes, sir.

Q. Well, if it did affect them, it would indicate what? An increase in estimated future requirements?

A. I think that would be a reasonable assumption.

Q. And you did not include that in your estimate, though?

A. No, sir.

Q. Why not?

A. Only the normal amounts, I might say, of expected increases. If one of these companies would convert its facilities or employ its facilities for purposes connected with defense, it might materially change the volume of gas purchased by that customer, but I know of no indication which would warrant me in making such an estimate at this time and neither am I prepared to say that that will not happen, but at the same time I am not prepared to say that it will.

Q. Well, then, if it is as uncertain as to not happening as it is to happening, why wouldn't you give it consideration rather than to take the position that the situation is apt to remain static?

A. I know of no reason for assuming that it will not happen, nor estimating that it will happen.

Q. Now, who at these Army posts were seen with reference to their estimated future requirements?

A. I couldn't give you the names of the officials.

Q. Well, who communicated with them?

A. Mr. Thackrey, in most instances.

Q. At both forts?

A. Yes. Perhaps Mr. Shortess or Mr. Davis, in certain instances.

Q. What are the present sales—annual sales—to each of those forts?

A. The annual sales in volume—

Q. Yes.

A. —for the full year of 1939 at Fort Warren was

18,527,000 cubic feet; at Fort Logan, 8,776,000 cubic feet; the Prison Farm wasn't a customer during 1939.

Q. Now, as to Fort Warren and Fort Logan—

Mr. McCreery: He has got one more.

Mr. Lange: Oh, yes.

The Witness: The sale to the Denver Water Board in 1939 was 9,010,000 cubic feet, making a total in 1939 of 36,313,000 cubic feet.

By Mr. Lange:

Q. Well, now, the Fort Warren and Fort Logan—what are your estimates with reference to those two purchases for the years beginning 1941?

A. If I may refer to the interval there, being 1940, before leading up to 1941—

Q. Yes.

A. —at Fort Warren, the 1940 sale, based on ten months actual and two months estimated, is 18,904,000, which is slightly in excess of 1939, which was 18,527,000.

At Fort Logan the 1940 sale, actual and estimated, is 8,073,000 which is a decrease under the 1939 figure of 8,776,000. In 1941 we have estimated that the Fort Warren sale will be 20,300,000, and that the Fort Logan sale will be 8,800,000.

Q. You say that you estimated that on what basis?

A. On the basis of the discussions with the officials at both Forts as to probable increases in the usage of gas, as to the probable effect of increased personnel at these forts and whether or not such increased personnel would be by the same division of the Army or other defense units and whether or not such sale would come under this contract and whether or not such additional facilities would use or require gas at all. We have no definite information that that is the case.

Q. Well, if there were additional personnel at either one of the forts it would follow very definitely that there necessarily would be an increased use of gas there, wouldn't there?

A. Well, not if the additional personnel was housed in a new area, in buildings not supplied by gas under this con-

tract, and by a division which was not included under this contract.

Q. Well, in what way are those limitations in this contract, as not being applicable to the other?

A. The contract is made with a definite branch of the Army. If some other branch moves in it would make its own contract.

Q. Well, where would they get their gas at either fort if they didn't get it from your company?

A. I wouldn't know of any other supply at either fort.

Q. Wouldn't it necessarily follow, then, that with the limitations in the present contract if there were additional personnel at either of the forts, the changes in the contract necessary to permit the supplying of the necessary amount of gas there would be forthcoming without question?

A. Along with that would necessarily go the assumption that these additional units desire to use gas and that is not necessarily true.

Q. Well, are they using any other fuel at either fort now?

A. Oh, yes, the amount of gas is a small part of the total fuel consumption.

Q. What are the uses of gas at those forts at the present?

A. For domestic purposes only, and not for the heating.

Q. You mean for cooking and water heating?

A. Yes, sir.

Q. Well, if there were an increased personnel, there would be an increase in the use of gas for those purposes, wouldn't there?

A. Not unless the enlarged facilities were equipped to use gas and made a contract to use gas. If, for example, in the quarters of an officer if other officers moved in, why, they would occupy additional quarters.

Q. Well, using your yardstick that what is being presently done is a better guide than a variation from that, if that is what is presently being done at both forts, if there were an increased personnel, wouldn't you then also assume that that would be followed in the same fashion as it is being carried on now?

A. Not necessarily, no, sir.

Q. The uses?

A. No, sir.

Q. Why do you vary on that score?

A. Because the authorities who purchase this fuel may prefer some other fuel.

Q. Yes, but that may occur with reference to any of these other users that you have made the assumption that it is more accurate to continue on a basis presently obtaining rather than deviate from that?

A. That is what we have done in the case of these two forts except we have made some increases in the volumes. For example, the volume at Fort Warren, which I mentioned in 1940, of 18,904,000 cubic feet, we have estimated will increase to 21,000,000 in 1942.

Q. And what do you estimate will happen in 1943?

A. We have maintained the same figures after 1942.

Q. Right on through to the end?

A. That is right. It may vary, and undoubtedly will vary from year to year, but we have no means of predicting the extent of those variations from year to year.

Q. Well, do you have any means of extending these predictions on sales for resale right through every year? You begin with—after the actual at 1941 with 1,970,800, and then two million two; 208; 214; 219; 223; 227; 231, right on through to 1949. How do you get those variations spelled out in your sales for resale?

A. The principal factor which increases the sales for resale is the selling of additional house heating gas; that is, the conversion of customers from the strictly domestic classification to the house heating classification and that results in a very large increase per customer so converted. The industrial portion of the sale for resale to which you have referred is practically uniform.

Q. When does it become static in that column?

A. It is practically static for the entire period. There are slight variations.

Q. Well, let's see, from the first year that you estimate for the future on your sales for resale, what is the breakdown by classifications for that first year between domestic and industrial resale?

A. For 1941—

Q. Yes, 1941.

A. —the domestic sale for resale is—strike that, the domestic sale for resale is 1,482,200,000, and the industrial

town border sale for resale is 424,800,000, making a total of 1,907,000 cubic feet in 1941.

Mr. McCreery: Wait a minute. Correct that figure—1,907,000 Mcf., rather than cubic feet, isn't it?

The Witness: 1,907,000,000 cubic feet. That is the correct figure.

By Mr. Lange:

Q. Cubic feet?

A. Yes.

Mr. McCreery: He said 907 thousand.

By Mr. Lange:

Q. Now, in connection with these sales for resale industrial, what inquiry was made of those industrials that are in that resale class in Cheyenne, Wyoming?

A. No direct inquiry, the inquiry being made to the Cheyenne distributing company, and obtaining its estimate of the amount of gas which it expected to sell to its customers.

Q. Oh, then in connection with the possible future sales or estimated future sales in Cheyenne, Wyoming, that information, whatever you have on that, was given to you by the Cheyenne Light, Fuel & Power Company?

A. That is right. Consideration of that information was given in the preparation of these figures.

Q. Entirely—that is, you based that entirely on their information without any independent investigation of your own?

A. No, the figures were modified or tempered as the men making this estimate saw fit. In general, however, the information obtained from the local distributing companies was reflected into the figures.

Q. Was that a formal communication, or in what fashion did you get that information?

A. In conference.

Q. In conference?

A. Yes, sir.

Q. And do you know what character of survey the Cheyenne Light, Fuel & Power Company made?

A. Yes, they make a continuous survey of their market

prospects as to the per cent of saturation of house heating customers, and the per cent which they expect and intend to strive to get year by year, in the future.

Q. Well, have you a schedule of what they estimate the future requirements to be?

A. I have a schedule which is different to the final conclusion, but I think it conforms fairly closely to their estimate. The Cheyenne Light, Fuel & Power Company is estimated to purchase in 1941 for domestic purposes 494,200,000 cubic feet, and for industrial purposes 55,000,000 cubic feet, or a total of 549,200,000 cubic feet.

Q. For what year?

A. For the year 1941.

Q. All right, the year beyond that, did they estimate that?

A. The estimate for each of the remaining years is shown in the same fashion. The following year, 1942, the Cheyenne Light, Fuel & Power Company is expected to purchase 516,900,000 cubic feet for domestic purposes and the same 55,000,000 feet for industrial purposes, there being no upward trend in that business.

Q. No upward trend in that business at all?

A. No, sir.

Q. Is that the estimate of the Cheyenne Light, Fuel & Power Company?

A. Yes, sir.

Q. And do you know what character of industrial survey they made in order to base their estimate on that assumption?

A. I do. They make a continuous industrial survey.

Q. They do?

A. As a matter of industrial solicitation from day to day and year to year.

Q. How many industrial customers do they serve for resale?

A. I don't believe I have that figure before me. I may be able to find it here in just a minute.

There were twelve in the year 1936 and eleven each year up to the present time and we have estimated that it will remain at eleven.

Q. No consideration given to any possible new industrial customers there?

A. We have no reason to do so and we did not.

Q. You just assumed that that same number would stay on?

A. It is possible that a new customer will enter the area or that one or more of the present customers may stop the use of gas, but we—

Q. Do you know—

Mr. McCreery: Just a moment. Let him finish.

Mr. Lange: All right.

The Witness: I believe that is all.

By Mr. Lange:

Q. Do you know to what extent the industrial customers in Cheyenne estimated their future requirements when they were interviewed by someone from the Cheyenne company?

A. I know that there was no indication of any substantial change in the volume expected to be purchased by these customers as a group. There will always be, of course, variations in the purchases by individual customers and in a group as a whole from year to year, but there is no reason to believe that that will change substantially from year to year and no means of estimating in which year such change, if there is a change, occurs.

Q. Well, going back, though, applying the same assumption to those resale industrials you still maintain that it is much safer to assume a static condition for the future rather than to change?

A. Only under circumstances in which there is evidence —change that—only under circumstances where the evidence points to a fairly uniform continuation in the future.

Q. On the other hand, from all indications that you had in your conferences or correspondence with any industrial users, haven't they always indicated their unwillingness to predict more than a year in the future?

A. That is correct.

Q. Well, what reason did they give for that unwillingness?

A. Because they were unable to predict.

Q. Well, wouldn't the course of least resistance for them to follow, be to attempt a prediction?

A. I wouldn't know what their course would be.

Q. You wouldn't know what their course would be?

A. No.

Q. You have made no further effort than your contacts with them to get whatever prediction they have up to the point that they want to give it?

A. Well, that was the only effort that it was possible for us to make and we made that effort.

Q. And then projected your assumption from there on out?

A. That is correct.

Q. Now, did you read into the record the list of industrial main line customers, those sold directly off the line?

A. I referred to various customers but I don't believe I read the entire list.

Q. I'd like to have the list of those main line industrials.

A. The Golden Fire Brick Company at Golden, the Denver Pressed Brick Company at Loveland, the Great Western Sugar Company at Johnstown, the Kuner-Empson Company at Brighton, the Coors plant at Golden, the Continental Oil Company north of Fort Collins, the Producers Canning Company at Fort Collins, the Colorado Portland Cement Company at Laporte, and the Public Service Company of Colorado at Valmont, a total of nine.

I might explain that the Public Service Company of Colorado at Valmont used a small amount of gas in 1939, but is not a regular user of gas.

Q. These industrials that you just named are regular users of gas?

A. The first eight are regular users.

Q. And what use is made of the gas by these industrials? If it is different, will you indicate it?

A. It is somewhat different. The Golden Fire Brick Company and the Denver Pressed Brick Company use it in the manufacture of brick. The Great Western Sugar Company uses gas in a certain part of their process, preparing some of the materials used for purifying their product. The Kuner-Empson Company at Brighton is, I believe, a food products company and gas is used in the preparation of those products. The Coors plant at Golden uses the gas in the preparation of hops. The Continental Oil Company north of Fort Collins uses the gas in field operations, such as pumping powers, or other purposes.

The Producers Canning Company at Fort Collins uses gas in the production of their food products. The Colorado Portland Cement Company at Laporte uses gas in the burning of clinker in the production of cement. The Public Service Company of Colorado at Valmont used gas in 1939 in a power plant at that location.

Q. Now, Mr. Hancock, with reference to these main line industrials, have they all been on the line a number of years?

A. Not all of them, but most of them.

Q. They are all established industries?

A. Yes, with the exception of the Continental Oil Company to which I referred and the particular usage of gas by that company at Fort Collins—north of Fort Collins—is used, subject to discontinuance for the reasons previously mentioned.

Q. Now, the industrials that you have named have all been on the line at least five years, haven't they?

A. I believe that would be true.

Q. All right, let's take the first one. What has been the trend in its purchase of gas during that period?

A. Beginning in the year 1936, and beginning with the first customer, the Golden Fire Brick Company, a consumption by years has been as follows: 73,269,000 cubic feet; 77,880,000 cubic feet for 1937; 72,185,000 cubic feet for 1938; 66,921,000 cubic feet for 1939, and an estimate based on ten months actual and two months estimated for 1940 of 45,000,000 cubic feet. I might say in connection with that plant that the estimate made for 1940 prior to the beginning of the year—I happen to have that figure before me now—was 67,000,000 cubic feet, but the actual experience during the year for the first ten months and the estimated experience during the remaining two months indicates that the sale during 1940 will be 45,000,000 cubic feet.

Q. Well, what about the Colorado Portland Cement Company?

A. Beginning in the same year, 1936, the Colorado Portland Cement Company purchased 916,017,000 cubic feet; in 1937, 961,897,000 cubic feet; in the year 1938 it purchased 706,144,000 cubic feet; in 1939 it purchased 1,015,502,000 cubic feet.

Q. Now, then, what did the Colorado Portland Cement

Company tell you with reference to their estimated future requirements?

A. That company told us that they expected to run during 1940 about a normal rate. However, it developed that that was somewhat optimistic.

Q. What did they infer by "normal rates"?

A. Approximately one billion cubic feet.

Q. Approximately one billion cubic feet?

A. That is correct, and that was the estimate that the Colorado-Wyoming Gas Company made prior to the beginning of 1940, but during 1940 it developed that the period of opening the plant was somewhat later than normal and it now develops that instead of running to December 31st or later, as previously estimated, that it will close on December 15th.

Q. Well, what assumption have you given their future requirements?

A. For the year 1940, have estimated 900,000,000 cubic feet.

Q. You mean actual?

A. That is based on actual up to the day of the estimate, plus an estimate of the remaining portion of the year and thereafter, beginning in 1941 and extending to 1949, we have estimated if that company continues to be a customer that it will use one billion cubic feet per year.

Q. Over what period?

A. One billion cubic feet per year.

Q. Per year?

A. Per year.

Q. On through to the end of your estimated period?

A. That is right. There is no reason to believe that that consumption will be substantially increased as the use of gas by that or any other cement plant is necessarily limited, not only to its sale of cement, but to the number of kilns which are installed and unless the plant is enlarged, that will be the limitation on its use of gas.

(Vol. 26, pp. 3678-3695.)

* * * * * *

Q. And you related these estimates entirely on that phase of it to these purchase price figures as reflected in this contract?

A. As reflected in the Colorado Interstate Gas Com-

pany's contract and to a very minor extent in the other gas purchased contract.

Q. To what extent in the other gas purchased contract?

A. To the extent that gas available under that contract is very minor in character.

Q. In fact, almost—What percentage of the total amount of gas purchased by your company is purchased from the Colorado Interstate Gas Company? Take the year 1939.

A. Between 98 and 99 per cent.

Q. Between 98 and 99 per cent?

A. Yes, sir.

(Vol. 27, pp. 3733-3734.)

"Now, Mr. Hancock, in connection with this program of maintenance that you have projected, you heretofore referred to the situation which comes to pass when a line becomes seasoned.

"A. That is right.

Q. And when in your opinion will this line become seasoned?

A. I don't believe I have arrived at an opinion on that question.

Q. And doesn't that have any—strike that.

Doesn't the determination of that have a direct bearing on this estimated future maintenance?

A. No, you could arrive at the estimated future maintenance without ever giving the question of whether it was seasoned thought or not. That is merely a conclusion that you would arrive at for discussion purposes, but regardless of when it became seasoned would be somewhat of academic interest. The element sought here is how much money would have to be spent for maintenance during each of the years covered by the estimate.

Q. Well, this last four-year period of estimated maintenance, hasn't that any element of the seasoning period in it, or leveling off?

A. It probably could be so considered. However, as I explained this morning, the leveling off there is more a selection of the jobs to be done in those years in order to even out the extraordinary maintenance program. It should be borne in mind that when a line is selected for mainte-

nance that it is not essential that it be done that particular year. That could be deferred until the following year. In other words, the line is not in danger of breaking so there is no emergency condition to meet by prompt action. It is more an orderly program of rehabilitation.

Q. Now, in connection with your preparation of this program of estimated future requirements on transmission maintenance expense, and the maintenance therein contemplated, what—strike that "what"—did you give any consideration to the provisions of the Commission's uniform system of accounts for natural gas companies?

A. In estimating the maintenance costs—

Q. In estimating all these items that go into these figures that you have under transmission maintenance?

A. —I followed, in classifying the items, the division which I am accustomed to in following the books of this company. As to whether it conforms with the uniform system of accounts or not, I don't know.

Q. Do you know what the uniform system of accounts provides for with reference to the matter of retirement units of the company's property?

A. No, sir, I wouldn't be qualified to testify as to that.

Q. You gave no consideration to that in the preparation of this estimate?

A. No, sir. The only thing that I did in making this estimate was to forecast the amount of money that would be necessary to be spent on the lines. It can be stated under any account numbers whatsoever. That wouldn't effect my estimate.

Q. Well, what is the company's program with reference to the time limit of its property units?

A. I haven't given any study to that.

(Vol. 27, pp. 3769-3772.)

* * * * *

The Trial Examiner: Mr. Lange, before you get off of that, off of taxes, I have a question to ask the witness.

Mr. Hancock, with the exception of this compressor station, the Arapahoe compressor station that is assumed to be completed, there was no major program put, was there, for additional construction in this system?

The Witness: With the exception of the completion of

the Arapahoe station as the second unit for 1941, there is no additional construction contemplated; however, to make that statement plain, I believe I should explain that the loads that are projected in this estimate to 1949 cannot be handled without some addition to compressor station facilities some time after 1941. It may be as late as 1945, but I have given no consideration to the exact character or cost of that additional facility or the time when it will be installed. It will be a difficult thing to do but I just want to call attention to the fact that the peak loads represented by the additional business for 1949 could not in my opinion be handled by the facilities which have been described as existing as of 1941.

The Trial Examiner: That is, the compressor station facilities, or do you have—

The Witness: I am referring principally to the compressor station facilities. I believe that is all that will be required, but at the time that that requirement has to be met, I believe it can be met more intelligently by a study at that time than we would be able to do at this time.

(Vol. 27, pp. 3776-3777.)

* * * * *

Commission Exhibit 202 (Appendix this Record).

Commission accounting witness, whose qualifications are elsewhere herein set forth, described Commission Exhibit 202 as follows:

The Witness: "This report sets forth the income accounts of Colorado-Wyoming Gas Company for the years 1925 to 1939, inclusive, in thirty-seven statements, schedules, and subschedules. It contains income accounts for each of the years 1939, 1938, and 1937, reclassified and adjusted in detail, and income accounts for each of the years prior to 1937, reclassified and adjusted for more significant items only.

"In presentation, a distinction between tabulations has been made by designating the major or master tabulation as

statements and the subordinate or supporting tabulations as schedules and subschedules.

"The statements, seven in number, comprise Statements B1, B2, and B3, which are condensed income statements per books and as adjusted, for the years 1939, 1938 and 1937, respectively; Statement B4, which is a tabulation of Expenses Suspended for the Consideration of the Commission for the years 1939, 1938 and 1937; Statements B5 and B6, which contain Condensed Income and Surplus Accounts for each of the years, 1925 to 1939, inclusive, as reclassified and as adjusted, respectively; and Statement B7, which is a computation of the rate of return for the years 1926 to 1939, inclusive.

"Statements B1, B2, and B3, show by major groupings of income: (1) Income per books, (2) Examiner's Adjustments, as summarized from adjustment entries presented in Schedules B10, B11, and B12, and (3) Income as Adjusted. The Income Account was adjusted to make it more nearly reflect the legitimate operating income of the company from gas operations. In addition to the three classifications enumerated above, Statements B1, B2, and B3, contain also items of Income Suspended for the Consideration of the Commission, which are tentatively included in Income as Adjusted by the Examiner. These suspensions are more fully described and explained in a discussion of Statement B4, below.

"The Examiner's Adjusting Entries, which are summarized in the Schedules B10, B11, and B12, for the years 1939, 1938 and 1937, respectively, are set forth in detail, entry by entry, mainly in Schedules B13, B14 and B15. There are twenty-nine entries, each of which is designated by one of a series of numbers that runs from '100' to '128' and each entry is designated on Schedules B10, B11, and B12, by its numbers so that through the medium of these summaries the individual entries are related to the Income Accounts presented in Statements B1, B2, and B3. In addition to entries in the '100' series, the summaries also contain entries from the '200' and '400' series, which were made primarily in connection with the reports on this company entitled 'Gas Plant Accounts and Examiner's Adjustments' and . . . ."

By Mr. Lange:

Q. That's Exhibit 199?
A. That is right, yes.

"• • • 'Annual and Accrued Depreciation of Gas Plant Accounts and Examiner's Adjustments,' respectively."

Q. That's Exhibit 201?
A. That's right.

"Schedules B16, B17, and B18, and their subschedules support the item 'Operating Revenues' that appears in Statements B1, B2, and B3, for the years 1939, 1938 and 1937, respectively. By customer, these schedules show point of delivery, contract metering base, revenue from sales, number of Mcf. sold on contract metering base and as translated to a uniform base of 14.65 lbs. pressure per square inch, and the average rate per Mcf. on the contract metering base and on the uniform base of 14.65 lbs.

"Schedules Nos. B19, and B20, and B21, and their subschedules support the item 'Gas Purchased for Resale' that appears in Statements B1, B2, and B3, for the years 1939, 1938, and 1937, respectively. By vendors, these schedules show point of delivery, contract metering base, purchase price of gas, number of Mcf. purchased on contract metering base and as translated to a uniform base of 14.65 lbs. pressure per square inch, and the average rate per Mcf. on the contract metering base and on the uniform base of 14.65 lbs. Subschedule No. 1 of each of the Schedules Nos. B19, B20, and B21, is an analysis of the cost of gas purchased for industrial distribution. By industrial customer, these subschedules show in the same manner that the schedules do, the cost, the quantity, and the average rate of gas purchased for resale. Subschedule No. 2 of each of the Schedules Nos. B19, B20, and B21, is an analysis of the cost of gas purchased for residential and commercial distribution. They show the cost, the quantity, and the average rate of gas purchased for resale in the same manner that the schedules do, but instead of showing it by customer as the Subschedules Nos. 1 do, they show it by the five price blocks at which this company made its purchases of gas, namely at 50 per cent of revenue, and at 10 cents, 20 cents, 22½ cents, and 35 cents.

"Schedules B22, B23, and B24, support the item 'Operation and General' that appears on Statements B1, B2, and B3, for the years 1939, 1938, and 1937, respectively. By account, these schedules show expenses of Transmission Lines, Compressor Stations, and Measuring Stations, and General Expenses, per books and as adjusted. They also show suspensions.

"Schedule No. B25, which contains a tabulation of Operating and General Expenses for each of the years 1934 to 1939, inclusive, supports the item 'Operation and General' that appears for each of those years in Statement B6. By account, this schedule shows expenses of Transmission Lines, Compressor Stations, and Measuring Stations, and General Expenses; for the years 1934, 1935 and 1936, it shows them per books and for the years 1937, 1938 and 1939, as adjusted. The figures in this schedule for the last three years are identical with the figures shown in the 'as Adjusted' column of Schedules B22, B23, and B24; they were repeated in this schedule as part of the comparison of the operating expense accounts for the six years ended December 31, 1939.

"Schedule No. B26 shows the amount of Maintenance for the years 1934 to 1939, inclusive, per books. No adjustments are proposed. Certain items for the year 1937 considered by the Bureau of Engineering to be extraordinary maintenance are listed at the bottom of the schedule. Substantially all of these items were incurred in connection with the reconditioning of a section of the company's main line north of Fort Collins, Colorado. The totals shown for each of the years 1939, 1938, and 1937, agree with the amount of maintenance shown on Statements Nos. B1, B2 and B3, respectively, and the totals for all six years with the maintenance for those years shown on Statements Nos. B5 and B6.

Schedule No. B27 shows for each of the years 1939, 1938, and 1937, the kind of taxes assessed against the company, exclusive of income taxes, the basis of the assessments, the rate of taxation, and the resulting tax. The schedule supports Statements Nos. B1, B2, and B3.

"Schedule No. B28 is a list of surplus adjustments and indicates the effect of these adjustments on various income accounts for the operations of certain years.

"Schedule No. B29 is a schedule of gas used by the company during the years 1939, 1938, and 1937, expressed in volume stated at a pressure base of 12.9 lbs. per square inch absolute and in dollars of cost computed at 12½ cents per Mcf.

"Schedule No. B30 is a reconciliation of the gas purchased by this company from Colorado Interstate Gas Company for the years 1939, 1938, and 1937, as shown by the adjusted accounts of Colorado Interstate Gas Company (cf. report on Income Accounts and Supplemental Data of Colorado Interstate Gas Company, Subschedule No. 1 of each of Schedules Nos. 17, 18, and 19) * * *"

Q. Is that Exhibit No. 140 that you there refer to, Mr. Smith?

A. Yes, that is correct.

"* * * and by Schedules B10, B20, and B21, of this report.

"Statement B4 comprises six items of expense that have been suspended by the Examiner for the special consideration of the Commission. It designates them by letters, A to F, inclusive, and fully describe them, giving specific reasons why they are so classified, and in some instances puts forth suggestions or recommendations as to the disposition to be made of them. The biggest suspension is the cost of gas purchased by this company from Colorado Interstate Gas Company, an item which obviously must remain suspended until the Commission has made its determination relative to the Colorado Interstate Gas Company. The other items may briefly be described as follows: fees paid Petroleum Advisers, Inc. (a mutual service company), Managements fees paid Public Service Company of Colorado, Legal fees, and Federal and Colorado Income Taxes. These items were suspended by the Examiner in his attempt to determine whether or not they were properly allowable and if so to what extent, because he had no adequate precedent to guide him or else lacked information about the nature of the items themselves. The four appendices of this report relate to two of the suspended items.

"Statements Nos. B5 and B6 are each Comparative condensed Income and Surplus Accounts for the years 1925 to 1939, inclusive; B5 is per books and B6 is as adjusted.

"Statement B7 is a computation of the rate of return earned by the company on its utility operations in each of the years 1926 to 1939, inclusive. For each of these years the sum of one-half of the total of Gas Plant in Service at the beginning and at the end of the year, as adjusted, is considered as the average balance of gas plant in service during the year.

"The average balance in the Reserve for Depreciation of Gas Plant in Service, as adjusted, determined in the same manner as the average balance of Gas Plant in Service, is deducted from it to arrive at the net average investment in Gas Plant in Service. To this investment was added an amount to cover Working Capital Requirement. The amount allowed for this requirement each year was the amount developed by the Examiner for the year 1939. Finally, the average yearly balance of Contributions in Aid of Construction, as adjusted, was deducted. The division of the amounts of annual net utility income, as adjusted, by the amounts of the resulting bases produce the rate of return for each year.

"Over the 14-year period the company's Rate of Return on its Gas Plant operations, thus computed, has averaged 12.27 per cent per annum."

(Vol. 67, pp. 9728-9736.)

* * * * *

Cross Examination.

By Mr. McCreery:

Q. Mr. Smith, in connection with this Exhibit 202, why did you include the income accounts of the company from the beginning of its operation?

A. Primarily, of course, for information purposes, and to go on with that, the reason I thought that information might be of use was because we had found it necessary to restate the depreciation; we therefore had applied several adjustments to the company's per book figures, the most significant of which is, of course, depreciation with reference to those earlier years and then it seemed to me that Statement B7 which tabulates the return which the company had earned as therein computed, might be of value from an information standpoint in these proceedings.

Q. What materiality does the income account, we'll say for 1929 have—your adjustments and depreciation and capital accounts are made in other exhibits, are they not?

A. They have been determined, we might say, in other exhibits, and then carried forward to this exhibit from the other exhibits.

Q. But otherwise determined in your other exhibits. They aren't determined in this exhibit, they are just carried forward in this exhibit?

A. You are referring to depreciation as adjusted?

Q. Other adjustments that you found or felt necessary to make in connection with, we'll say, with the property account and in connection with the study on depreciation and annual retirements, those are just carried forward in this exhibit with respect to the years 1929, say?

A. Yes, I believe that is a correct statement.

Q. Well, now, what value or relevancy has the income account of this company for 1929 in this proceedings?

A. Well, just whatever weight, as I see it, that the Examiner or the Commission—I mean, the Trial Examiner or the Commission wishes to give to it.

Q. What weight could it have?

A. Well, I believe that that is for them to determine.

Q. Well, you must—you said you included it because of what weight it might have. What was your idea of the weight it might have? Put it that way.

A. Well, it gives information as to the history of this company, as to its results over the past years. It ties in our results at the end so that anybody who would take our balance sheet and our surplus accounts as we have adjusted them and would feel more—would feel much more secure about the figures resulting in the final balance sheet, if they are backed up with this sort of thing.

Q. This isn't a reclassification proceedings.

A. I don't know what you mean by "reclassification."

Q. A proceedings to establish a system of accounts under Section—I believe it is 8 of the Act.

A. Well, that being a legal matter I don't know.

Q. That isn't a legal matter, it is a factual matter, Mr. Smith. The reason I asked the question was because you appeared to treat it as though it were that kind of a proceedings and that is why I asked that question to find out

whether you understood the difference between a rate case proceeding and a proceeding to establish a uniform system of accounts under the Natural Gas Act.

A. That is your interpretation of it, I think.

Q. Well, is it yours?

A. I have tried to supply information. Now, the use to be made of that and the weight to be given it is something that I haven't tried to dictate at all and I am not at this time. I don't know what weight may be given to it.

Q. You don't undertake to say that it has any relevancy as far as you are concerned?

A. Not from a legal standpoint, no.

Q. Well, an actual point of view?

A. From an accounting point of view I think that it is much better to have these things tied in to show that our income accounts tie in with the plant and they tie in with the surplus, and that we have given a correlated picture as a whole. I think that is very important from an accounting point of view.

Q. Is it material to the Commission in any way to know what your ideas are with relation to the rate of return that this company might have received in past years?

A. This company?

Q. This company, yes.

A. I think that the Commission must have been interested in that or I wouldn't have been asked to put such a schedule in.

Q. You were asked to put that in?

A. That is right, I was asked to put that in.

Q. By whom?

A. Well, as I recall, I think Mr. J. P. Jackson, Assistant Chief Accountant who was in charge of the investigation up until his resignation in about June or July 1940. He requested that that schedule be included.

Q. That being Schedule B7?

A. Statement B7 of Exhibit 202.

Q. So that that was done under his suggestion or direction?

A. That is one reason I have for doing it.

Q. What other reason did you have?

A. Because I think it is good information to put before a body in a case of this kind.

Q. He directed you to put it in, however?

A. Yes, that is correct.

Q. Now, in your Statement B7, you didn't include in that any charges against income for certain of the accounts which you suspended, did you?

A. Yes, all the accounts—the accounts which were suspended, the expenses suspended for the further consideration of the Commission on Statement B4, for the years 1937, 1938 and 1939, are all treated on Statement No. B7 as though they were fully allowable expenses.

Q. Now, do you mean to say that regulatory commission expense is in the figure?

A. I will go ahead with that. I am glad you called my attention to that.

Q. Yes.

A. I thought you were referring to such things as income taxes and legal fees, but they are in. Now, with reference to the regulatory commission expenses, our treatment there has been to take them out of the expenses reflected in the income account and put them into a balance sheet caption, designated "Other Deferred Debits," and that has the effect of suspending them for the time being until the Commission determines the disposition that should be made of them, and therefore you are correct in saying that our tabulation of the return earned by the company for the year 1939 as adjusted by us does not include any deduction in expenses against income for expenses in connection with this rate proceedings.

Q. So whether that is set up as a single item in one year or amortized, shall we say, over five years, there is no reflection of either procedure in your rate of return figures as shown in Statement B7?

A. No, it is treated in Statement B7 you might say just as though it had never happened.

Q. Just as though it had not been spent?

A. Yes.

Q. Now, Mr. Smith, turn to Page 11 of your Exhibit 202.

(Vol. 67, pp. 9739-9744.)

* * * * *

Item No. 104, "Bad Debts—International Metal Foundation" is listed as $444.26. You have disallowed that entirely so far as the rate payers are concerned?

A. I have an explanation there.

Q. All right.

A. The company handled this item on its books as a debit to revenue, I believe, and I believe your accounting exhibits you put in show it that way. In my reclassification for accounting convenience so as to not get this item mixed up in the revenue schedule, I classified it as an operating expense even though not handled that way on the company's books.

Q. You took it for what you really felt it was?

A. I felt as though it was an expense item of some sort rather than a debit to revenue. I believe that is the prevailing accounting practice.

Q. Having done that and having so reclassified it, then why did you take it out of that amount of money which we have been allowed to collect from the rate payer? You did that in this item, did you not?

A. I put it down in the miscellaneous income deductions.

Q. Which would be deductions that would not be chargeable against the rate payer?

A. That is correct.

Q. Why is that not a proper item?

A. For one reason, it pertains to a direct industrial customer.

Q. It doesn't relate to the sale for resale in general or sale for resale to Cheyenne, either one, does it?

A. No, not in any sense as far as I can see it.

Q. So your real reason for putting it in miscellaneous revenue after you reclassified it, Miscellaneous Deductions, rather, was with respect to a portion of the business which is not under the jurisdiction of this Commission, is that true?

Mr. Lange: Of course, that is purely a legal question and that would be a legal conclusion as to whether this Commission has jurisdiction.

Mr. McCreery: I am trying to find out why the witness did it, that is all.

The Witness: It relates to the business of a direct industrial customer.

By Mr. McCreery:

Q. As distinct from a sale for resale customer?

A. Yes. The two types of customers are naturally distinct, and I think there may be another reason for handling it as I have. I believe that is the first item of bad debts this company has had in a good many years and I think that it would probably be a very unusual circumstance that it would have any bad debts, because of the fact it sells only for resale and to large industrial customers.

Q. In general?

A. In general. I think that is a further reason for excluding this particular item from the expenses for 1939 on which to get picture of its normal operations for that year. In any event, if we hadn't decided to put it below the line, so to speak, I would have treated it as a nonrecurring expense.

Q. A nonrecurring expense may still be allowed against the rate payer, may it not?

A. That I don't know, but it is certainly is flagged and set out separately in consideration of whatever use may be made of these figures for 1939 in setting a rate.

Q. In setting this up you say you are trying to produce a normal picture for 1939. Just what do you mean by that and what is the purpose? The figures you arrive at are embodied in your Statement B7 in trying to set up a rate of return, are they not, and this figure here is not in any part of that?

A. This figure here is not in any part of that and of course it is too small to have any effect upon the results in Statement B7. It wouldn't change that percentage one way or the other.

Q. Aren't we concerned with having it set forth correctly? Whether it would make a difference of a great amount or not, is something else again. The loss might as well have been $4,000 instead of $400, because the treatment would be the same, wouldn't it?

A. The treatment would have been the same if it had been $4,000, but in regard to the previous question, I think I can make a statement. I regard a financial statement as having two aspects, one which is strictly quantitative and the other qualitative. The qualitative aspects of any financial statement could vary slightly within certain limitations without changing the qualitative aspect or the real meaning of that statement at all. I don't mean by that that any

accountant would have license to put something in a financial statement he knew was wrong or thought was wrong, or any kind of a manipulation like that. I merely mean to say that some slight differences in the quantities wouldn't necessarily change the real meaning or the real significance of that statement at all because in the final analysis the qualitative aspect of it, the true interpretation of it is more significant.

Q. Supposing, Mr. Smith, there was repetition of a similar item in 1942 after the rate base had been established. On this precedent it would mean $444 to the company, wouldn't it? Isn't that just what it would mean to the company?

A. Not entirely, because I assume there is an element of profit in that $444.

Q. Discounting that, it would mean a gross of $444 and a difference between cost and sale price. The cost has already been paid to the Colorado Interstate Gas Company for gas received, has it not? The company is already out the cost of that gas?

A. I believe that is correct. I don't recall that Colorado Interstate has ever contracted to reimburse you for bad debts.

Q. We are not aware of it, but assuming for the purpose of the argument it was a net amount of $444, the company was out, and if it should go out for industrial use or some other reason, I just wanted to know what the reason was.

(Vol. 67, pp. 9754-9758.)

* * * * *

Q. Mr. Smith, I would like to go back again for the moment to the capital stock tax adjustments for both the years 1938 and 1939. The detail of your explanation with respect to the year 1939 is found at Page 18. The year 1938 is found at Page 23 and the year 1939 at Page 18 of this Exhibit 202.

Now, in your computation made on Page 18, it appears that your adjustment is made on the basis of the capital stock account plus the surplus account as of December 31, 1938. Now, supposing the surplus account at that time had been $526,000, what would you have done?

A. In that event I would have proposed an allowance of $2,027, for capital stock tax.

Q. Even though, of course, the surplus account is property of the company?

A. I beg your pardon?

Q. The surplus account is really the property of the company in so far as it includes any excess of earnings which might be declared into dividends at the election of the company? In other words, supposing we have part of this $526,000 and it were earnings that were put into surplus and held there.

A. That surplus would be represented by assets which would—

Q. Part of that assets might be cash, might it not?

A. That's it. That is true. We couldn't tab the dollar on any of it.

Q. I didn't hear you.

A. I say, it might some of it be in cash, and you couldn't tab, t-a-b, the dollar on any of the surplus.

Q. So what is the basis for this computation?

A. The basis for my computation?

Q. Yes.

A. Because of the fact that a payment of Federal capital stock tax on a declared value which is in excess of the net worth of the company indicates a payment to avoid—that it is a payment of Federal capital stock tax to avoid payment of excess profits tax.

Q. Well, now, supposing the assets of this company on a sale and exchange basis on the open market were worth, irrespective of what rate base you may have in mind, were worth $2,226,000, and that all those assets were used in utility operations, but that would be their open market value.

A. That wouldn't affect my computation.

Q. It wouldn't affect your computation at all even though that was the market value of the assets devoted to the utility service?

A. That's right. I have related my computation to the investment of the stockholders in this case in the business.

Q. On the basis of the face of the capital stock account. Whether the investment were larger, you haven't inquired.

you have simply taken it on the basis of the face of the stock $1,501,000.

A. Well, a million, five hundred thousand dollars, that represents the investment of the stockholders in this company. I have disregarded the fact that $98,000 of the company's assets have been loaned back to the stockholder. I haven't treated that as—

Q. You haven't treated that as an asset?

A. Well, I have—it is on the asset side of the balance sheet and I haven't—

Q. It doesn't enter into your computation?

A. I haven't entered it into it. You see by one theory I could say that the investment of the stockholders in this company is the face value of the capital stock, $1,501,000 less the amount which the company had loaned back to the stockholder, or a net of about $1,400,000.

Q. And under what theory could you do that?

A. Just the fact.

Q. I mean—that is your theory.

A. I mean it is a fact.

Q. It is a fact, but it is still an asset, isn't it, part of the assets of this company? In other words, is the obligation of Public Service Company of Colorado to pay the $98,000 worth just about as much in reliability as the money itself in the till?

A. I wouldn't know unless I knew all about the Public Service Company. I don't know what their credit standing is.

Q. Let's assume that that is true. It would still be an asset of the company, whoever it was loaned to, wouldn't it?

A. Well, it may be recorded, and is recorded as an asset. As I say, I haven't departed from that treatment, and yet analyzing the transaction closely. I think it is obvious that the net investment of the stockholder is the amount of the contribution to capital less the loan back. I can't see it any other way.

Q. From which they are drawing six per cent interest?

A. That is true.

Q. I see. So that is the net investment on the theory that the $98,000 is gone.

A. No. It is just the fact that the stockholder still has only got $1,400,000 in the company.

Q. I see. All right, now, in 1939 you suspended all of the gas purchased for resale.

A. That is correct.

Q. $498,000, and you similarly suspended all of the gas purchased by this company for sale in the amount of $429,077.71 in 1938, and $449,927.09 for 1937. What is the purpose of that suspension?

A. The Colorado-Wyoming Gas Company purchased, I believe it is approximately 99 per cent of its gas, from the Colorado-Interstate Gas Company.

Q. Yes.

A. And I thought this suspension was proper as a matter of routine in accounting to earmark the cost of gas for the purpose of this exhibit because of the fact that the Colorado Interstate Gas Company is also a respondent in this same proceeding.

Q Well, now, of course, the amount of the purchase of gas by Colorado-Wyoming Gas Company from Colorado Interstate Gas Company is apparent in numerous other schedules and statements of numerous other exhibits, so that the amount is obvious at any time for the purpose of the Commission; so just to earmark it, what is the *prupose* of earmarking it—for instance, the purchase of gas in 1937?

A. Well, we made all of our suspensions for the years 1937, 1938 and 1939.

Q. I know, but why did you suspend that for 1937, Mr. Smith? That's what I'd like to know. What justifies that suspension? There has got to be, it seems to me, even under the accounting principles, there has got to be a reason for it.

A. I think I have stated my reasons simply to set it out, to earmark it.

Q. So that the Commission would know how much it was?

A. That is one factor, and perhaps another one is that it seemed to me that before a rate could be set for Colorado-Wyoming Gas Company it was necessary that a determination be made as to the cost of gas to Colorado-

Wyoming Gas Company from Colorado Interstate Gas Company.

Q. But that cost of gas is going to change from year to year as it always has changed from year to year and it is a variable amount and enters into the expense of the company to the extent of the expenditure, does it not? It doesn't affect the rate of return or the rate base, it is simply an allowable expense. You can't determine what any of these expenses are going to be just because of the gas cost in 1939. That doesn't give you any possible lead in the realm of accuracy as to what the bill for gas is going to be in 1941, does it?

A. That is true of any expense item.

Q. Yes.

A. They may vary.

Q. But you are trying to estimate, is that it—trying to estimate what the expenses for gas might be in 1941?

A. No, that is the farthest thing from my intentions.

Q. I thought it must be. I am just unable to understand why that was suspended here. Those were the amounts that were paid, were they not? There isn't any question about that.

A. That is correct.

Q. And they were paid pursuant to the contract between the companies and as far as 1937 is concerned, prior to the passage of the Natural Gas Act, were they not?

A. I believe those facts you state are correct. It is my understanding that these payments for purchased gas have been in accordance with the contract between the two companies, and it is my understanding that the Natural Gas Act was passed in June 1938.

Q. That's right. Now, with respect to seeking information, was the occasion for it and the same inquiry of course, extended to both the years 1938 and 1939, and you are assuming that in each of those years the payments were actually made and that they were made pursuant to a contract between the parties?

A. Yes, that is my understanding.

(Vol. 67, pp. 9773-9780.)

* * * * *

Statement B-7 (Ex. 202) is a computation by Commission witness SMITH, of "rate of return" of the Company for the years 1926 to 1939, inclusive, in accordance with Commission's Exhibits 199, 200, 201, 202, 203, 204 and 205. Statement B-7 is hereinafter abstracted under the subject title "Net Return of Company."

(Vol. 67, p. 9737.)

(f) *Entries 100 to 111* (Commission Ex. 202).

None of the foregoing numbered items, aggregating $16,860.52 (Ex. 202, Schedule B-10, p. 11), is deducted or considered in arriving at "Utility Income" for the year 1939, as computed by the witness Smith on line 8, Column 3, Statement B-7, Exhibit 202 (Vol. 67, p. 9790).

Entries 100 and 101, "Expense of Entertaining" $1,362.97, and "Donations" $293.50, were eliminated by Smith as improper expense items. Without admission of impropriety by the Company, these items were eliminated in Company Exhibits 242 and 245, and in "Net Return," Company Exhibit 248 (see Appendix) (Vol. 83, p. 12,442).

Entry 102, "Scout Reports—Eastern Colorado Oil Fields" $300, was eliminated for the assigned reason.

> "Copies of the reports received were sent to Mr. H. D. Hancock, 70 Pine Street, New York City, a director of the company. The cost of these reports is regarded as an improper charge against the ratepayers of the Colorado-Wyoming Gas Company for the reason that it appears that other companies in the Cities Service Company group received the use and benefit of such reports but were not assessed a part of the cost thereof."

(Ex. 202, p. 16.)

Company witness H. P. DAVIS testified on this item as follows:

> "* * * By this entry Mr. Smith proposes to exclude an item of $300.00 from operating expenses merely because he considers it an improper charge. It is quite possible Mr. Smith did not fully understand the nature and importance to us of the service for which this charge is

made. This service consists of a report rendered to us three times a week of activities and developments in oil and gas field operations in Colorado and southern Wyoming. The management considers this service a necessary and valuable one, as it enables them to keep abreast of any developments in the exploration for and discovery of gas and the potential effect which such activities might exert on the conduct of our own business. As this report covers only the contiguous area in which we operate, Mr. Smith's statement that other Cities Service groups are receiving the benefit of this report without cost to them has no support. The nearest Cities Service pipe line or gas company is some 500 miles or more from Denver and could have little or no interest in any gas discoveries in this area. We do furnish a copy of this report to Mr. Hancock at New York as stated by Mr. Smith but Mr. Hancock in 1939 was a director of this company and then and now a member of the engineering staff of our Advisory Service Company. This report is valuable only to Colorado-Wyoming Gas Company, the only operating unit in this area and does not benefit any distant related company."

(Vol. 83, pp. 12,425, 12,426.)

It has no value to Mr. Hancock in connection with any other properties (Vol. 84, p. 12,551.)

SMITH on cross-examination stated he had no evidence to support his elimination of item 102, except that:

"It was sent to Mr. Hancock and he serves a number of companies. If he serves all of those companies and gets any benefit from this, the benefit might have accrued to any other company in the group as well as this company."

which he called "*prima facie* evidence." (Vol. 67, p. 9747.)

Entry 103 is an elimination of "Delaware Corporation license tax" which Smith states is "a duplication of expense". (Ex. 202, p. 17.) With respect thereto, DAVIS testified:

"This Mr. Smith states is not an allowable operating

expense on the ground that a tax of approximately an equal amount is paid to the State of Colorado and is therefore a duplicate charge. The corporation is incorporated under the Delaware laws and the annual tax is a requirement to retain our charter. The tax paid to Colorado is a privilege tax imposed on foreign corporations. There is no duplication. * * *"

(Vol. 83, p. 12,427; Vol. 84, p. 12,563.)

Entry 104 is the elimination from 1939 expense and reclassification to "Miscellaneous Income Deductions" of the item of "Bad Debts," $444.26, as "loss from uncollectible accounts resulting from sale of gas during 1938 to International Metal Foundation, a direct industrial customer" (Ex. 202, p. 17).

Entries 105 and 110, "Rate Case Expenses," $14,079.16, and "Gas Used Incidental to Pipe Inspection," $202.50 (also rate case expense), are eliminations from 1939 expense. They are reclassified by the witness in "Deferred Debit Caption." The attention of the witness was directed, on cross-examination, to Commission's "Uniform System of Accounts—Natural Gas Companies B-A 797, Regulatory Commission Expense," paragraphs A and B. The Company in its entries conformed to proper accounting (Vol. 67, pp. 9790-9797). These items were not considered in arriving at "utility income," as computed by the witness (Ex. 202, Statement B-7, Column 3, p. 10) (Vol. 67, p. 9791).

Entries 106, 107 and 108 are reclassifications of over-accruals and under-accruals of tax items for the year 1939, as recomputed by the witness Smith (Ex. 202, pp. 17, 18).

Entry 109. The item of "Federal Capital Stock Tax" is reduced from payment as made in 1939 by the Company of $2,127.64 (Vol. 67, p. 9762) to $1,527, the "allowable tax" as computed by Smith (Ex. 202, pp. 18, 22, 23).

"The amount which the company pays for Federal capital stock tax is subject to its declared value of capital stock for capital stock purposes. This declared value is stated by the company at such an amount as will prevent its paying excess profit tax in case its taxable net income exceeds a certain percent—I believe it is 10% of the ad-

justed declared value for capital stock tax purposes. In other words, the only reason for paying Federal capital stock taxes in such an amount is to avoid payment of excess profit tax."

(Vol. 67, pp. 9762, 9763.)

In connection with this matter, H. P. DAVIS, in presenting Exhibit 242, testified as follows:

"* * * This formula seems both arbitrary and unfair. For example, had we set up the book value of our stock issue at say $1 per share, the Capital Stock Tax computed on Mr. Smith's formula would then amount to only $88, whereas if we had fixed a stated value of $60 per share the tax would amount to $3,038. The latter amount is greater than the amount actually paid and yet would apparently have been allowed by Mr. Smith under his prescribed formula had this been the book value instead of the $33.34 per share stated on the books of the company. The stock of this company is not traded in on the open market and accordingly we have no means of establishing a market price or value. We believe, however, that this stock could readily have commanded an actual market price of $50 per share or better at that time, which would produce a substantially greater capital stock tax. * * *"

(Vol. 83, pp. 12,426, 12,427.)

Upon cross-examination the witness, DAVIS stated that his criticism of the entry was that Mr. Smith ignores the requirements of the tax and sets up a different basis than the one on which the Company is required to pay. The Company's officers passed upon the declared value of the capital stock. Had the Company set up a book value for the stock of $1 per share, according to Mr. Smith's formula, the tax would be $88. If the Company had fixed the stated value at $60, the tax would amount to $3,038. The directors of the Company have the privilege of putting and stated value they wish on the stock. The Company declared a value on the basis, in 1939, at approximately $2,200,000. This figure results in avoiding the payment of any excess profit tax and more nearly reflects the book worth of the

plant than the stock issue would reflect; "a million and a half dollars doesn't represent the cost of our property by any means." The outstanding stock in 1939 was 50,000 shares, which represents the original investment of the stockholders in buying their stock. The plant had a book value of approximately $1,900,000. There are no outstanding bonds (Vol. 84, pp. 12,554-12,561).

Entry 111 is an adjustment and suspension in 1939 of $178.13 of the invoice for apportionment of the overhead expense for Petroleum Advisers, Inc. for December, 1939 (about 1% of the total), which was not recorded on the books of the Company until January, 1940, and in adjusting the 1938 and 1939 expense for similar items which were not recorded on the books until 1939, the witness stated that because of certain details received from Petroleum Advisers, Inc. there was a question as to whether or not certain officers in Petroleum Advisers, Inc. could be of any benefit to the Colorado-Wyoming Company, and in connection with this, testified as follows:

"Q. Well, you recommend: 'The Examiner recommends allowance of only that portion of the charges in question which the Commission finds reasonable and necessary in conducting gas utility operations of the Colorado-Wyoming Gas Comapny,' and then you state previously:

"It may be questioned whether or not it is equitable to apportion salaries of the following employees of Petroleum Advisers, Inc., who appear to be engaged primarily in activities benefiting member oil companies, against the rate payers of the Colorado-Wyoming Gas Company."

He further stated:

"I am making no determination here. This is a wide open proposition as far as I am concerned" (Vol. 67, pp. 9769, 9770).

(Vol. 67, pp. 9764-9772.)

The witness SMITH also testified that as a matter of policy all legal fees were suspended by him. This pro-

cedure was suggested by the superiors. He stated that the books of the Company show that payment was made for such services, and that Exhibits 202 and 202-A show "what I believe to be evidence as to the services that were rendered for 1938-1939" (Vol. 67, pp. 9781, 9782). He further testified that on page 6 of Exhibit 202, he raises the question of the reasonableness of the payment of $5000 annually as legal fees for a company the size of Colorado-Wyoming Company (Vol. 67, p. 9782). He testified it was his understanding that the $5000 payment for the year 1939 was not only as a retainer, but in payment for all services during the year, exclusive of Commission regulatory expense, and was in payment for all services rendered as shown in Exhibit 202-A (Vol. 67, pp. 9782-9786).

The witness *Smith* also suspended from the income account, Federal and Colorado State income taxes, and stated that these items were "suspended for further study and consideration by the Commission and its staff, for the reason that the income received by the respondent and which constituted the basis for assessment of its income taxes, may, as a result of this proceeding, be found to have been in excess of a fair return" (Ex. 202).

Commission Exhibit 204 (Appendix this Record).

Q. Mr. Smith, in connection with that Exhibit 204, "Balance Sheet and Supplemental Data," have you prepared a written statement explaining it in substance?

A. Yes, I have.

Q. Will you please read that statement into the record?

A. "This report consists of a balance sheet of Colorado-Wyoming Gas Company as of December 31, 1939, and seven supporting schedules.

"Statement A1 shows the balance sheet per company's books, reclassifications and adjustments of its items made by the Examiner, and the balance sheet as adjusted. The seven schedules comprise one that summarizes the Examiner's reclassification and adjustment entries, one that contains a reclassification entry, one that summarizes the

advance account of Public Service Company of Colorado, one that gives an analysis of 1939 rate case expenses, and three that support and explain other balance sheet items, namely, capital stock, contributions in aid of construction, and surplus.

"Schedule A 10, a summary of the Examiner's adjusting entries applying to the balance sheet, designates by number each of these entries, provides a brief description of each of them, and classifies the amount of each by balance sheet account through the device of a columnar distribution. The entries themselves with the exception of Entry No. 1, which is shown in Schedule A 11, are not given in this report but are to be found in other accounting reports on this company prepared for the purpose of this proceeding.

"The '100' series entries are shown in the report entitled 'Income Accounts and Supplemental Data including Examiner's Adjustments,' * * * "

Q. That is Exhibit 202 in this proceeding?
A. Yes.

"* * * the '200' series entries in the report entitled 'Gas Plant Accounts and Examiner's Adjustments,' * * *" Exhibit 199, I believe.

Q. Yes.
A. "* * * and the '400' series entries in the report entitled 'Annual and Accrued Depreciation of Gas Plant and Examiner's Adjustments.' "
Q. That is Exhibit 201?
A. Yes, sir.

"The debits and credits entered against balance sheet accounts in Columns 3 and 4 of Statement A 1 are the totals of columns of Schedule A 10, each of which columns represents a balance sheet account and contains all the debit or credit entries affecting the account that it represents.

"Schedule A 11 contains one entry designated as No. 1. Its purpose is to transfer to the 'Contributions in Aid of Construction' Account the amount of $2,982.14, which the

books of the company show to have been advanced for construction by International Metal Foundation. For further explanation of the transaction see the entry itself.

"Schedule A 12, which is a summary of the account reflecting advances made by this company to Public Service Company of Colorado, shows the principal transactions recorded in the account from September 1, 1931, the date on which Public Service Company of Colorado effectively became the owner of this company's capital stock, to December 31, 1939. The transactions are shown by years. It will be noted that no change in the balance of the account has taken place in the years 1938 and 1939. Interest of 6 per cent per annum is paid on the account.

"Schedule A 13 is an analysis of 1939 rate case expenses amounting to $14,281.66. These expenses are carried in the balance sheet as a deferred debit pending their disposition by the Commission. They were taken out of the company's income accounts by adjusting Entries Nos. 105 and 110 in the report entitled 'Income Accounts and Supplemental Data Including Examiner's Adjustments.'"

Q. That is Exhibit No. 202?

A. That is right. Most of the items described on Schedule A13 were charged on the company's books to Account 991, Regulatory Commission Expenses.

"Schedule A 14 provides information relative to the company's capital stock and gives, among other things, the number of shares authorized, issued, and outstanding, and the holders of record as of December 31, 1939.

"The original subscription for the company's capital stock, made on December 1, 1925, was for ten shares at $100 a share. The offset to the capital stock account in the entry which recorded this subscription was 'Subscribers to Capital Stock.' On April 30, 1932, the $1,000 debit balance in the 'Subscribers to Capital Stock' account was transferred to the account of Public Service Company of Colorado (cf. Schedule A 12).

"Incident to the transfer of the original Wellington-Fort Collins line to this company and the execution of a contract to sell gas to the Fort Collins Producing Corporation, this

company issued 4,990 shares of common stock on December 30, 1925, to the nominee of H. O. Caster, who was evidently an intermediary for Cities Service Company. Upon its issuance no value was assigned to this stock in the capital stock account.

"From December 30, 1925, until December 21, 1931, the capitalization of the Colorado-Wyoming Gas Company remained at 5,000 shares of no par value capital stock, with a total recorded value of $1,000. On December 21, 1931, a stock dividend of $1,500,000 at the rate of $33.33-1/3 per share was paid through the issuance of 45,000 additional shares. This increased the total capitalization of the corporation to 50,000 no par value shares and the total recorded value of capital stock to $1,501,000. Since December 21, 1931 this has not changed.

"Schedule A 15 is a summary of the 'Contributions in Aid of Construction' account, as adjusted, and shows the names of the seven contributors whose contributions make up the balance in this account as at the end of each of the eleven years, 1929 to 1939, inclusive.

"Schedule A 16 shows twenty-three Examiner's adjustments of the surplus account that increase the balance of that account, as of December 31, 1939, from $23,076.48 to $27,334.72. Although the net effect of the twenty-three entries is small, the debits and credits aggregate $546,668.61 and $550,926.85, respectively. These entries are the same entries that are shown in Column 17 of Schedule A 10. They are reproduced in Schedule A 16 so that they may be referred to more conveniently and to provide a reconciliation of the balance of the surplus account per books, with the balances of that account as adjusted by the Examiner."

Q. Mr. Smith, I note on the title page of this exhibit appears the approval of Mr. Harold Tomlin, Examiner in charge of regional office, and W. E. Baker, Chief Accountant. Those gentlemen are both connected with the Federal Power Commission in the capacities as therein stated?

A. They are.

Q. Is there any additional statement that you wish to make or further explanation which you wish to give for the

record at this time relative to this exhibit, Mr. Smith?

A. No, I believe not. I believe the supporting schedules show pretty well what is in the balance sheet, together with the other exhibits.

(Vol. 68, pp. 9825-9831.)

Commission Exhibit 205 (Appendix this Record).

(Exhibit 205, Witness Smith, marked for identification.)

By Mr. Lange:

Q. Mr. Smith, have you also prepared a written statement in connection with that exhibit, which written statement gives a summary description of it?

A. Yes, I have.

Q. Will you please read that into the record?

A. "The principal purposes of this exhibit are as follows:

"(1) To present a comparison of operations of Colorado-Wyoming Gas Company for the nine months ended September 30, 1940, and 1939.

"(2) To present the expenses incurred by Colorado-Wyoming Gas Company in connection with this rate case up to September 30, 1940.

"(3) To present the changes in the investment of Colorado-Wyoming Gas Company in gas plant in service for the nine months ended September 30, 1940.

"The schedules forming this exhibit and which present the detail supporting the purposes, as explained in the previous paragraph, are as follows:

"Schedule No. 1 Statement of Income and Surplus Accounts as Reclassified for the Nine Months Ended September 30, 1940, and 1939, and Comparison

"Schedule No. 2 Statement of Operation, General and Maintenance Expenses, as Reclassified, for the Nine Months Ended September 30, 1940, and 1939, and Comparison

"Schedule No. 3 Balance Sheet, as Reclassified, September 30, 1940.

"Schedule No. 4 Deferred Rate Case Expenses September 30, 1940

"Schedule No. 5 Gas Plant in Service September 30, 1940

"All of the figures used in this exhibit are those shown by the books at the dates stated in the schedules after giving effect to rate case expenses removed from operating expenses and reclassified as deferred rate case expenses.

"Results of Operation

"Net utility income, as shown in Schedule No. 1, decreased $26,649.56 for the nine months ended September 30, 1940, as compared with the nine months ended September 30, 1939. The decrease is the result of changes in the following accounts:

	Increase (Decrease) 1940 over 1939
Operating revenues	($3,318.74)
Operating revenue deductions	
Gas purchased for resale	$17,501.64
Operation and general	(387.37)
Maintenance	4,037.72
Depreciation	—
Taxes, general and income	2,178.83
Total	$23,330.82
Net utility income	($26,649.56)

"The dollar amount of operating revenues decreased $3,318.74 while the average price per Mcf. of gas sold increased 1.69 cents. The ratio of domestic gas sold to total sales was higher in 1940 than in 1939.

"The increase in cost of gas purchased for resale is due principally to an increase of 2½ cents per Mcf. in the rate for domestic gas, effective September 26, 1939.

"The fluctuations accounting for the net increase in operation, general and maintenance expenses of $3,650.35 are detailed in Schedule No. 2. Transmission lines maintenance which increased $4,553.46 is the most important fluctuation and represents consistently larger amounts expended *montjly* for reconditioning work. Superintendence distributed to compressing and measuring station operations during 1939 was distributed as transmission lines operation in 1940 which accounts for the variation in these accounts.

"Financial

"Schedule No. 3, the balance sheet at September 30, 1940, reflects the balances as shown by the books with the exception that rate case expenses are reclassified in accordance with the footnote on that schedule.

"Changes in gas plant service for the nine months ended September 30, 1940, are summarized by accounts in Schedule No. 5 and classified between additions and retirements.

"The principal addition to plant is that represented by work order No. 154A which covers the installation new of a compressor station and equipment at a location designated as Arapahoe. This work order was closed to the following plant accounts.

"Land owned in fee	$ 400.00
Structures and Improvements	1,140.52
Pumping and Regulating Equipment	30,678.70
Total	$32,219.22"

Q. These matters contained in Exhibit 205 were taken by you or those working under your supervision from the books and records of Colorado-Wyoming Gas Company?

A. Yes, they were.

Mr. Lange: I believe that is all for the present.

Q. Do you have any further statement or further explanation to make with reference to this exhibit at this time?

A. The exhibit contains book figures unadjusted for the periods indicated with the one exception that the rate case expenses have been reclassified to a deferred caption on the balance sheet for the same reasons that they were for 1939, and the schedule given on Page 4 of the exhibit shows the

accumulated total of the deferred rate case expenses to September 30, 1940, which have been taken out of expenses for the years 1939 and 1940, placed in a deferred caption, pending the disposition by the Commission.

(Vol. 68, pp. 9908-9912.)

* * * * *

Commission Exhibit 247 (Appendix this Record).

(g) *Commission 1941 Projection*

(Commission Ex. 247).

FULTON W. COPP, one of the engineers for the Commission, was first employed by the Commission in April, 1939, and testified he was assigned to the Colorado-Wyoming Company case on September 18, 1939, and worked on his various studies until May, 1940, and "perhaps a month the latter part of 1940" (Vol. 66, pp. 9606-9610).

* * * * *

A. "Exhibit No. 247 presents estimated volume of gas sales, and estimated operating expenses (excluding purchased gas expense, regulatory commission expenses, depreciation expense, and income taxes) of Colorado-Wyoming Gas Company for the year 1941. The exhibit is composed of four schedules:

"Schedule No. 1—Estimated Volume of Gas Sales, 1941

"Schedule No. 2—Estimated Volume of Gas Purchased, 1941

"Schedule No. 3—Estimated Operating Expenses, 1941 (Excluding Purchased Gas Expense and Regulatory Commission Expenses)

"Schedule No. 4—Estimated Taxes, 1941 (Excluding Income Taxes)

"The volume of gas sales to each customer, as shown in Schedule No. 1, is based on an analysis of 1941 market conditions, after interviews with all of the principal customers, and a study of the records of the company for recent years.

No increase has been estimated for potential sales to new industrial customers, nor do the estimates reflect possible future increases resulting from National Defense activities.

"Schedule No. 2 shows estimated volumes of gas to be purchased in 1941 from the company's two sources of supply, Kir-well Oil Company and Colorado Interstate Gas Company.

"Schedule No. 3 shows estimated operating expenses, consisting of transmission and distribution operation and maintenance, sales promotion, and administrative and general expenses. These estimates are based on an analysis of the experience of the company in recent years, and consideration of factors which affect these expenses. No estimates are included for purchased gas expense, and regulatory commission expenses. The account descriptions shown in Schedule No. 3 correspond to those in the Federal Power Commission's Uniform System of Accounts for Natural Gas Companies.

"Estimated taxes, shown in Schedule No. 4, have been calculated on the basis of existing tax rates. No estimates are included for Colorado income taxes, nor for Federal income, excess profits, declared value—excess profits, and defense taxes."

(Vol. 84, pp. 12612-12613.)

* * * * *

Q. As I understand, Mr. Copp, you prepared this estimate on the basis of study of a company's operations during the past years?

A. That is correct.

Q. And in the light of that, you made these estimates as you have stated in your testimony.

A. That is correct.

Mr. McCreery: What is the period of time you have been in Denver, Mr. Copp?

The Witness: Since April 1939.

Recross Examination.

By Mr. McCreery:

Q. When did you start work on this exhibit?

A. September 1939.

Q. So that your experience and any familiarity you have with the company begins then, aside from what you would read in their books or somebody would tell you?

A. That is correct.

Redirect Examination.

By Mr. Lange:

Q. When you made your inquiries, you made them—that is, you directed your inquiries to the company officials?

A. That is right.

Q. And when you directed inquiries with reference to the requirements of these several customers of the company, you personally interviewed someone in each of those companies, didn't you?

A. That is correct, with the exceptions I have stated.

Q. In estimating these expenses set forth in Schedule 3, with whom did you take up any matters concerning the company? That is, with what officials or employes of this company?

A. The question concerning the operation of the company, that is, in the field, were taken up with Mr. Thackrey.

Q. And what is his position with the Colorado-Wyoming Gas Company?

A. He is the General Superintendent; and with regard to administrative and general expenses, that was taken up with Mr. Davis.

Q. He is the Secretary of the company?

A. I understand that he is Secretary of the company.

Recross Examination.

By Mr. McCreery:

Q. What did you do—what did you take up with him?

A. Oh, I discussed these various things with him, what these accounts consisted of in the past.

Q. You weren't seeking their ideas as to what they should be at all?

A. No, I asked him what these specific items were. Some were taken from vouchers, of course.

Q. You weren't seeking counsel or advice or anything of that kind from either of them?

A. Oh, no. Of course, I had to ask him what he intended to do at the Arapahoe station and things like that.

Mr. Lange: You were seeking what you figured was the necessary information upon which to proceed with this exhibit, is that it?

The Witness: That is true.

(Vol. 84, pp. 12664-12666.)

* * * * *

The witness identified Exhibit 247 prepared by him, which presents the estimated volume of gas sales and estimated operating expenses (excluding purchased gas expense, regulatory Commission expense, depreciation expense, and income taxes) of Colorado-Wyoming Company for the year 1941. The exhibit is composed of four schedules: Schedule No. 1, estimated volume of gas sales; Schedule No. 2, estimated volume of gas purchased; Schedule No. 3, estimated operating expenses (excluding purchased gas expense and regulatory Commission expense); and Schedule No. 4, estimated taxes (excluding income taxes). He stated that the volume of gas sales to each customer as shown in Schedule No. 1 is based on an analysis by him of the 1941 market conditions, after interviews with most of the principal customers and a study of the records of the Company for recent years. Schedule No. 2 shows the estimated volumes of gas to be purchased in 1941, from the Kir-Well Oil Company and the Colorado Interstate Company. Schedule No. 3 shows estimated operating expenses, consisting of transmission and distribution operation and maintenance, sales promotion and administrative and general expenses. These estimates are based on an analysis by the witness of the experience of the Company in recent years. The account descriptions shown in Schedule No. 3 correspond with those in the Federal Power Commission's Uniform System of Accounts for Natural Gas Companies.

Estimated taxes shown in Schedule No. 4 have been calculated on the basis of existing tax rates. No estimates are included for Colorado income taxes, nor for Federal income, excess profits, declared value—excess profits and defense taxes.

(Vol. 83, pp. 12,612, 12,613.)

Upon cross-examination the witness testified that in May, 1940, he interviewed direct industrial customers in connection with his study of the estimated use of gas in 1941 (except Colorado Portland Cement Company).

For the Adolph Coors Company he arrived at an estimated use of 14,000 M. c. f. for 1941, by taking the average of the 1939 and 1940 actual consumption of that company. The officials of the Coors Company (and of The Golden Fire Brick Company) indicated that their business was more or less stabilized and would go along about as it has in past years (Vol. 84, pp. 12,614, 12,615).

The Golden Fire Brick Company estimate was determined somewhat upon the necessity for building material in the future. The company manufactures a general line of building brick, including special fire brick. The only change that the officials of this company would anticipate in their requirements, would be if "building picked up considerably in this area." The estimate for this company also is based upon the average actual use of gas in 1939 and 1940 (Vol. 84, pp. 12,615, 12,616).

The estimate for Kuner-Empson Company is not exactly the average basis of use for 1939 and 1940. The estimated volume for 1941 is somewhat more than that for either 1939 or 1940 and was arrived at by the trend of the last few years. The officials of the company indicated only that their business had increased in the last few years and as a result their use of gas had increased. The trend was taken from the use of gas for the years 1936 to 1940 and, based upon these figures, an estimate of 40,000 M.c.f. is given for 1941 (Vol. 84, pp. 12,616, 12,617).

The witness was then questioned in regard to the volume estimated for the use of the Great Western Sugar Company in its Johnstown plant. He testified that the operation of that plant was dependent upon the sugar beet crop and that the estimate taken was the same figure as the actual consumption in 1940. He said that the 1941 consumption would not be affected by the 1941 beet crop, as the Johnstown plant was principally a molasses plant and its operations in any year were determined by the residue material or molasses accumulated in other plants during the preceding year. A reduction in the beet acreage for 1941

would have an effect upon the operations of the plant in 1942. The witness stated that he did not have a comparison of the beet crop in the Great Western Sugar Company areas for the years 1939 and 1940 (Vol. 84, pp. 12,617, 12,618).

The 1941 estimate of 45,000 M.c.f. for Denver Pressed Brick Company is the amount used in 1939, which is more than that used in 1940. This figure was taken for the reason that the President of the company stated that it had been very active in developing a new form of building brick and that it was believed that the use of this brick would be increased in Denver and that, based upon that fact, the 1939 estimate was taken instead of the average of two years, which average would have given the use of approximately 1,000 M.c.f. less than the figure taken (Vol. 84, pp. 12,619, 12,620).

There was no consultation with Producers. Canning Company of Fort Collins. That company used 761 M.c.f. in 1940, and 700 M.c.f. was used as an estimate for 1941 (Vol. 84, p. 12,620).

The Fort Collins Producing Corporation used approximately 5,800 M.c.f. in both 1939 and 1940 The estimate by the witness for 1941, was placed at 6,000 M.c.f., by reason of "the increased activity in the last quarter of 1940." This company was not interviewed. It is a subsidiary of the Continental Oil Company that uses gas for oil field purposes in the Wellington Field, in the production of oil (Vol. 84, pp. 12,620, 12,621).

The witness testified that the Portland Cement Company at Laporte, Colorado, used 864,390 M.c.f. in 1939, and 776,265 M.c.f. in 1940. The average for those two years would be approximately 820,000 M.c.f. at a 14.65-pound pressure base. The estimate of consumption made for that company in 1941 was 968,000 M.c.f. This estimate was increased over the average of the two preceding years for the reason that the Portland Cement Company, in the years 1937 to 1940, produced an average of 441,000 barrels of cement per year; that the company now has an order for 440,000 barrels of cement from the Caddoa Dam now being built on the Arkansas River; one-third of that order (147,000 barrels), is scheduled for delivery in 1941. The Colorado Portland Cement Company also has a plant at Portland,

Colorado. During the four-year period from 1937 to 1940, the Laporte plant produced 42% of the production of the two plants combined. The total average production of both plants for the same four-year period was 1,060,000 barrels of cement. The witness continued:

"I have added one-third of the Caddoa Dam order, or 147,000 barrels. I have taken 42% of that which is the amount of cement that has been produced by the Boettcher plant, and I arrive at a figure of 506,940 barrels for the Boettcher plant.

"Now, the average M.c.f. used at the Boettcher plant to produce a barrel of cement is 1.73. To go back a little bit, I have added 10% to the 506,940 barrels which is estimated as the production for the Boettcher plant for 1941. * * * That is based on pending construction in this area, principally the Big Thompson project which is now driving tunnel from Grand Lake to the Big Thompson River and which is going to use a considerable amount of cement."

The witness stated that the 10% estimate was his estimate, and that there was very little known about when the Big Thompson River construction would start or how much work would be done in 1941. The witness further stated that if the Cement Company produced all of the cement for the Caddoa Dam at the Portland, Colorado, plant, then it would be necessary that other orders be produced at the Boettcher plant. The witness gave no testimony as to whether there were any large or unusual orders in 1939 or 1940 (Vol. 84, pp. 12,623-12,626).

The witness was then questioned as to his knowledge of periods when the Colorado Portland Cement Company had been interrupted or shut off in their service of gas due to peak demands of resale customers of the Colorado-Wyoming Company, and he answered that he was familiar with the fact that in each of the years 1938, 1939 and 1940, there had been increased curtailment of the supply of natural gas to the Colorado Portland Cement Company at Portland, Colorado. He stated, however, that the Colorado Portland Cement Company, under ordinary conditions, operates from April 1st to approximately December 1st of each year, during which times he stated the peak domestic demands do

not cause plant shut-off. He stated that the Cement Company was equipped to operate two kilns throughout the summer, and could make this production easily in the summer time by the operation of the two kilns. He stated that in the past the Cement Company had been operated in such a manner that their gas supply had to be curtailed or shut off in each of the last three years. He stated that he was not advised whether the Company would change their operations and did not "know how they are going to operate that plant, but if they need cement they will produce it to the best of their ability." These matters were not considered in making the estimate (Vol. 84, pp. 12,628-12,630).

The Board of Water Commissioners of Denver used 7,773 M.c.f. in 1940. The average for 1939 and 1940 was approximately 7,700 M.c.f. In Exhibit 247 the use by this Board in 1941 is estimated by the witness at 8,000 M.c.f. This is computed on a normal degree-day year which would give 8,013 M.c.f. (Note: The Water Board is an industrial, not a domestic customer.) (Vol. 84, pp. 12,630, 12,631).

Fort Logan consumed 6,933 M.c.f. in 1940. The estimate for 1941 was raised to 8,000 M.c.f. on the theory that the Fort would be more fully occupied.

Fort Warren used 16,318 M.c.f. in 1940, which was increased to 18,000 M.c.f. on the estimate for 1941. The witness stated that he knew gas is not used for space heating at Fort Warren. The increase was based on an estimated increased use of gas in the permanent buildings at Fort Warren (Vol. 84, p. 12,632).

The amount estimated for use by the Federal Prison Farm of 2,000 M.c.f. in 1941 was based upon the actual use for that part of 1940, during which this institution used gas (Vol. 84, p. 12,633).

The witness was then questioned in regard to the estimated sales during 1941 to the distribution companies. He stated that the Greeley Gas and Fuel Company was interviewed in May of 1940, and was informed that there was domestic consumption in 1939 of approximately 129,000 M.c.f., and in 1940, 146,000 M.c.f. The estimate for 1941 is 160,000 M.c.f., which was arrived at on a trend basis. The trend for the years 1934 to 1939, inclusive, would give

155,000 M.c.f. but the trend for the years 1939 and 1940 would give 164,000 M.c.f. The average for the years 1939 and 1940 would be approximately 138,000 M.c.f. These figures include space heating, which had an average use in 1939 and 1940 of approximately 77,000 M.c.f. per year (Vol. 84, pp. 12,633-12,638).

The witness stated that considerable work had been done on degree days. He did not know much about wind velocities. Neither entered into his calculations with respect to space heating, although he admitted they would have an effect on such calculations (Vol. 84, pp. 12,633-12,643).

The witness was then questioned in regard to his 1941 estimate for Cheyenne. He testified that domestic and space heating gas in Cheyenne, from the inception of space heating in 1934, had been considered, and in response to inquiry, stated:

> "Domestic gas sold by Colorado-Wyoming Gas Company to the Cheyenne Light, Fuel and Power Company in 1934 was 235,945 M.c.f.; in 1935, 285,282 M.c.f.; 1936, 312,277 M.c.f.; 1937, 344,763 M.c.f.; 1938, 343,127 M.c.f.; 1939, 369,116 M.c.f.; in 1940, 409,602 M.c.f."

The witness further testified that he estimated the use in Cheyenne for 1941 would be 425,000 M.c.f. for domestic use. He took one-half of the increase for 1940 over 1939, which would give 429,000 M.c.f. and reduced that to 425,000 M.c.f. He declared it was found that the Cheyenne load was increasing and in 1941 would make greater demands upon the capacity of the Fort Collins-Cheyenne line. This would have a bearing on industrial sales in the area between Fort Collins and Cheyenne (Vol. 84, pp. 12,644, 12,643).

Then followed further testimony as to the shut-offs, known to the witness, at the Colorado Portland Cement Company's plant at Laporte, Colorado, with reference to which the witness commented, "Well, the cement company can operate at a much greater capacity in the summer when this won't have so much effect" (Vol. 84, pp. 12,644, 12,645).

The witness stated that he did not give any consideration to Mr. Hancock's studies or the conclusions of the Company engineers (Vol. 84, pp. 12,645-12,647).

As to "*Taxes Excluding Income Taxes for the Year 1941*" (Schedule No. 4), the witness testified that his projection assumed that the assessment and the rate in 1941 would be precisely the same as 1940. He did not follow any trends of increased taxation in the past years in arriving at his estimate. The Arapahoe Compressor Station was added and included in his estimate at an assessed valuation of $20,000, to which the 1940 rate was applied (Vol. 84, pp. 12,648-12,650).

The witness stated that the item, "*Other General Office Salaries,*" $4,900, (Schedule No. 3, Line 22), was arrived at by taking the 1940 expenditures and adding approximately $2,000 (an increase of $100 over the Company's projection), which difference was due to the necessity of employing an additional man to look after the plant ledger. Witness stated, "I understand his salary is charged to regulatory Commission expense, but he will be transferred to the regular office pay roll" (Vol. 84, pp. 12,651, 12,652).

In connection with "*Transmission and Distribution Expense-Operation*" (Schedule No. 3, Lines 1 to 9, 17 to 19), the witness testified that he had arrived at the figure $39,700 without considering the Company's estimate of $43,770. The Company's estimate did not interest the witness. He stated that the 1941 estimate for the operation of pumping stations is based upon the 1940 figure of $14,435, to which was added $1,680, "which consists of one-third of the time of three men required to operate the new Arapahoe station." He stated that Mr. Thackrey, Company engineer, had given him the information as to how the Arapahoe station was to be operated (Vol. 84, pp. 12,652-12,655).

The witness testified that as to his estimate for 1941 of the "management and supervision fees:"

"A. Management and supervision fees as estimated for 1941 are based upon the 1940 actual. The total per books for account number 794-1 is $3,618.90 for 1940 but included in that figure are 13 months. The thirteenth month is an estimate for December of 1940. Actually there is a figure of $538.91 that was made in January 1940 that is applicable to December 1939 so we have subtracted that, but left in the estimate for December, 1940.

"Q. When was this estimate made?

"A. December, 1940. This is a company estimate, not mine.

"Q. I know, but your figures were made long before that.

"A. Not this particular account here.

"Q. No, this one was one made within the last 60 days.

"A. Oh, yes. Subtracting the actual payment applicable to December of 1939 leaves a balance of $3,080.05, and now that is added to account 794-2 of $58.92 which I believe is direct expenses. That gives a total of $3,138.97. That has been rounded off to $3,200.00.

"Q. That is the way you arrived at that?

"A. That is correct."

(Vol. 84, pp. 12,655, 12,656).

The witness testified that, throughout the exhibit, the adjustments made by Mr. Smith in Exhibit No. 205 were used (Vol. 84, p. 12,656).

In connection with the "*salaries of officers,*" the witness testified that the estimate of $7,800 for 1941 was a small amount above the actual for 1940. The actual in 1939 was $7,300. He stated that he had not accepted the Company's proposed increase of salaries of certain of its officers for 1941, but had arrived at a different figure (Vol. 84, pp. 12,656-12,658).

With respect to the figure of $8,500 in Line 15, Schedule No. 3, Exhibit 247, "*Maintenance of Transmission Mains,*" the witness testified that his estimate of 1941 maintenance was on the basis of a study of the Company's operation during the past years; that he had been in Denver since April, 1939, and had started work on Exhibit 247 in September of 1939, and that his experience and familiarity with the Company began at that time (Vol. 84, pp. 12,664-12,666).

His computation he explained:

"A. My estimate for 1941 for the account maintenance of mains, labor, and that account also includes supplies and expenses, consists of ordinary maintenance, $1,000; moving of lines, $1,000 and extraordinary maintenance, $6,500, making a total of $8,500.

"Q. Just in round figures?

"A. That is correct.

• • • • •

"Q. The same thing is true, I suppose, of Line 13, maintenance of pumping station equipment?

"A. That is made up of two items: pumping station equipment, labor and maintenance of pumping station equipment, supplies and expenses.

"Q. Which is lower than the company's estimate, or higher?

"A. I don't recall. I don't know what the company's estimate is. For the item maintenance of pumping station equipment, labor, the estimate is $1650 and added to that is the estimate for supplies and expenses of $600, giving a total of $2,250.

"Q. That is based on an examination of the operation and so forth on your part?

"A. That is based on the amount of maintenance that has been done in the past, principally in 1940. As equipment grows older it naturally requires more maintenance. The labor costs in this maintenance item in 1940 was approximately $1 per horsepower or $1345.68. I have added to that $300 or 50 cents a horsepower for the Arapahoe station. It often is necessary to have maintenance work on engines when they are brand new.

"Q. To get them adjusted?

"A. That is correct. So I have allowed $300 in there. That makes a total of $1345.68 for supplies and expenses for that same account. For that same account I have taken a four-year average from 1937 through 1940 which is $385, and I have rounded it off to $500 and then added an additional $100 for the Arapahoe station, making a total of $600.

"*Mr. Lange:* Mr. Copp, going back to Line 15, maintenance of transmission mains, that $8500 item which includes the $6500 special item that you mention, that is not just a round number, is it? Have you got a breakdown for that?

• • • • •

"*The Witness:* All right, sir. Mr. Thackrey furnished me with information regarding sections of the various

lines which he regarded should be reconditioned within the next three years. That period included 1940. He estimated that a total of 1300 feet of 10-inch line would have to be reconditioned; 8,800 feet of 8-inch main line; 10,500 feet of 6-inch main line; 1,100 feet of the Brighton branch; 6,700 feet of the Greeley branch, and 13,700 feet of the Johnstown branch.

"*By Mr. McCreery:*

"Q. Now, what is the total cost on that?

"A. I haven't computed it that way.

"Q. Do you have the cost per foot of that?

"A. Yes. The cost per foot is exactly the same as Mr. Thrackrey gave me. For the 10-inch pipe, 90 cents; 8-inch, 78 cents; for 6-inch, 67 cents; 4-inch, 55 cents; 3-inch, 48 cents; 2-inch, 43 cents. Those are the costs that have been used throughout.

"Q. That was the extraordinary maintenance proposed for 1940 to 1942?

"A. For that three-year period, yes.

"Q. Yes, and you will recall that in dollars it was $22,276?

"A. Yes, sir.

"Q. Now, then, you deduct from that the work done in 1940, $5,706?

"A. That is correct.

"Q. Well, then, what do you do next? Deduct another item?

"A. I deducted 5500 feet of the 6-inch line of the Greeley, branch.

"Q. Which cost $3685?

"A. That is correct.

"Q. I mean, you wanted to defer that?

"A. Yes, to a later period.

"Q. You didn't want to do that in 1941?

"A. That is correct.

"Q. I see. Why?

"A. Because there is only one inspection hole that is near that section. That 5500 feet is beyond the furthest inspection on the Greeley branch and the maximum pit in that inspection was 45 mil. compared with a wall thickness of 250 mil.

"Q. But you don't know anything about this particular pipe that they had in mind that needs reconditioning?

"A. I understand that it is east of this inspection, practically at the end of the Greeley line.

"Q. Over in that irrigated area where there is a good deal of underflow?

"A. I don't remember whether it is irrigated or not. It was not on a public highway.

"Q. You remember that it is an irrigated country right there before you come into Greeley?

"A. I remember that it may have been cultivated. I don't know whether it was irrigated at that particular point or not.

"Q. That was $3685, so you subtracted that, too?

"A. Yes.

"Q. That left $12,885?

"A. That is correct.

"Q. What else did you do?

"A. Then I assumed that half of that amount of work would be done in 1941 which is $6442 and that has been rounded off to $6500.

"Q. So that is how you arrived at the $6500 figure?

"A. That is right."

(Vol. 84, pp. 12,658-12,663.)

The witness stated on redirect examination that he had directed inquiries as to the expenses of the Company, shown in Schedule No. 3, Exhibit 247, to officials and employees of the Company, and questions concerning the operation of the Company were taken up with Mr. Thackrey, the General Superintendent, and matters relative to administrative and general expenses were discussed with Mr. Davis, the Secretary of the Company. In the discussions with both of these men, the witness was not seeking advice as to the method of operating the Company, but inquired as to specific items (Vol. 84, p. 12,666).

(h) *Summarized Comparison of Estimates of 1941 Company Operations, by Company and by Commission.*

1. *All Sales, in M. c. f.*

	1. Hancock Contract Pressure Base)	2. Hancock (Reconciliation) (14.65 Pounds)	3. Copp (14.65 Pounds)
Domestic	(Exh. 115+245)		(Ex. 200)
Cheyenne L. F. & P. Co.	494,200	414,930	425,000
Public Service Co.	801,000	691,103	750,000
Greeley G. & F. Co.	179,800	155,131	160,000
Highway Gas Co.	7,200	6,276	7,000
Sub Total	1,482,200	1,267,440	1,342,000
Industrial (Resale)			
Cheyenne L. F. & P. Co.	55,000	46,178	45,000
Public Service Co.	352,000	303,706	233,000
Greeley G. & F. Co.	17,800	15,358	17,000
Sub Total	424,800	365,242	295,000
Public Authorities			
Ft. Warren (U. S.)	20,300	17,044	18,000
Ft. Logan (U. S.)	8,800	7,593	8,000
Prison Farm (U. S.)	3,000	2,523	2,000
Denver Water Board	9,500	8,034	8,000
Sub Total	42,600	35,194	34,000
Direct Industrials			
Golden Fire Brick Co.	54,000	46,073	48,000
Denver Pressed Brick Co.	54,000	46,073	45,000
Great Western Sugar Co.	236,400	207,205	220,000
Kuner-Empson Co.	42,400	36,960	40,000
Adolph Coors Co.	18,000	15,052	14,000
Ft. Collins Prod. Corp.	5,000	4,256	6,000
Prod. Canning Co.	800	681	700
Colo. Portland Cement Co.	1,000,000	868,260	968,000
Sub Total	1,452,200	1,224,560	1,341,700
TOTAL M. c. f.	3,359,200	2,892,436	3,014,700

2. *Expense of Operation* (Excluding Purchased Gas and Regulatory Commission Expense, and Income Taxes, Federal and State.)

	Hancock	Copp
Transmission and Distribution Operation. (Vol. 84, pp. 12,652-12,653)	$43,770	$39,708
Transmission and Distribution Maintenance	16,000	13,770
Administrative and General	33,335	30,150
TOTAL	$93,105	$83,628

(See, Ex. 115, 242 (Statements Nos. 2 and 3), 245 (Statement No. 4, "Revised Exhibit No. 115,") and 247; also testimony of Hancock, Willard, Davis and Copp.)

(i) *Regulatory Commission Expense* (Ex. 242 and Supp.).

Regulatory Commission Expense for the years 1939 and 1940, actual, and the year 1941, projected, is:

1939	$14,079
1940	32,998
1941	40,379.20

(Ex. 242, Statement No. 2, Statement No. 3, and Supplement.)

(See cross examination of Davis under "68", *supra.*)

Of the 1941 total of $40,379.20, only $27,600 thereof is included in projected expense for that year as reflected in 5-year amortization thereof, in Exhibits 242, 245 and 248.

(2) Revenue Expense and Income—Allocation to "Sales for Resale" (Ex. 117, 245.)

Applying the principles and methods of allocation applicable to the operations of Colorado-Wyoming Company, as hereinbefore abstracted under the subject title "The Method of Allocation Applicable in this Case," to "Sales for Resale," the "Net to Reserves and Return" derived from such sales was determined.

The witness Hancock testified with respect to Exhibit

117, Statement No. 2, entitled "Earnings Statement—Total Sales for Resale—1939-1945":

"• • • Exhibit No. 117 shows the earnings which reasonably may be expected to accrue to the company during the period ending with the year 1945, from all 'sales for resale.'

"The total figures shown on Exhibit No. 115 covering volume of sales in Mcf., cost of purchased gas, revenue from sales, operation and maintenance expense, and general and Federal income taxes have been apportioned between such sales for resale and all other sales. Such allocation has been projected for each year of the period ending in 1945."

(Vol. 27, pp. 3799, 3800.)

Such allocated revenue expense and earnings are summarized for the years 1939, 1940 and 1941, as follows:

Gas Sales M. c. f.	1939	1940	1941
Sales for Resale	1,706,323	1,838,965	1,907,000
Domestic	1,283,316	1,414,000	1,482,200
Industrial	423,007	424,965	424,800
Gross Earnings			
Sales for Resale	$ 579,578	$ 629,770	$ 655,116
Domestic	488,765	538,480	563,376
Industrial	90,813	91,290	91,240
Operation and Maintenance			
Purchased Gas	$ 330,410	$ 385,180	$ 401,830
Transmission Operation	29,310	30,730	38,320
Transmission Maintenance	3,770	8,930	13,930
General Taxes	29,488	31,639	33,007
Regulatory Commission Expense	14,079.16	14,500	14,000
General Expense—Other	28,907.84	30,450	35,085
Federal Income Tax	12,912	14,840	12,260
Company Used Gas—Credit	2,428	2,156	2,372
Net to Reserves and return	$ 133,129	$ 113,657	$ 109,056

(Ex. 117, Statement No. 2, Appendix.)

In "*Breakdown of General Expense*" (Ex. 116), as modified by "Revised Exhibit 116" (Ex. 242, Statement No. 3), certain eliminations are made, and in breakdown of "*Regulatory Commission Expense*" (Ex. 242, Statement No. 2), certain additions are made, and both are reflected in "Revenue, Expense and Income" applicable to "Sales for Resale," as set forth in "Revised Exhibit 117" (Ex. 245, Statement No. 6). (The additions to 1941 "Regulatory Commission Expense," set forth in Supplement to Exhibit 242, are not so reflected in "Revised Exhibit No. 117.")

"*Revised Exhibit No. 117*" (except as above noted) represents Revenue, Expense and Earnings PRESENTLY applicable to all *Sales for Resale*, and for the years 1939, 1940 and 1941, which are summarized as follows:

Gas Sales M. c. f.	1939 (Actual)	1940 (Actual)	1941 (Projected)
Sales for Resale	1,706,411	1,864,636	1,907,000
Domestic	1,282,056	1,480,220	1,482,200
Industrial	424,355	384,416	424,800
Gross Earnings			
Sales for Resale	$ 579,578	$ 640,993	$ 655,116
Domestic	488,264	554,671	563,876
Industrial	91,314	86,322	91,240
Operation and Maintenance			
Purchased Gas	$ 330,410	$ 388,690	$ 401,830
Transmission Operation	29,310	27,480	38,320
Transmission Maintenance	3,770	8,050	13,950
General Taxes	29,530	31,704	32,643
Regulatory Commission Expense	14,079.16	32,997.82	27,600
General Expense—Other	27,251.84	27,971.18	33,335
Federal Income Tax	13,364	14,343	10,026
Company Used Gas—Credit	2,428	2,241	2,372
Net to Reserves and Return	$ 134,291	$ 111,998	$ 99,784

(Ex. 245, Statement No. 6, 242, Statement Nos. 2 and 3, Appendix)

(3) REVENUE, EXPENSE AND INCOME—ALLOCATION TO "SALES FOR RESALE," CHEYENNE, WYOMING (Ex. 118, 245.)

Similarly applying the principles and methods of allocation applicable to operations of Colorado-Wyoming Company, as hereinbefore abstracted under the subject title "The Method of Allocation, Applicable in this Case" to "Sales for Resale," Cheyenne, Wyoming, the "Revenue, Expense and Income" attributable thereto was ascertained.

The witness HANCOCK testified that in Exhibit 118, Statement No. 3, entitled "Earning Statement—Sales for Resale at Cheyenne, 1939-1945":

> "The earnings so apportioned, for the year 1939 and ten months of the year 1940 are based on actual operation, and for the remainder of the period ending in 1945 are allocated on the projected earnings of the company as shown on Exhibit No. 115. The volume of gas sales, total revenue and cost of purchased gas are predicated on actual and expected sales at Cheyenne for resale. Transmission and operation expenses and general taxes are apportioned. Federal income taxes were based on Cheyenne earnings so found."

(Vol. 28, p. 3891.)

Such allocated revenue expense and earnings, for the years 1939, 1940 and 1941, are summarized as follows:

Gas Sales M. c. f.	1939	1940	1941
Sales for Resale	494,058	525,965	549,200
Domestic	439,204	470,800	494,200
Industrial	54,854	55,165	55,000
Gross Earnings			
Sales for Resale	$ 182,152	$ 193,300	$ 201,500
Domestic	166,336	177,300	185,550
Industrial	15,816	16,000	15,950

Gas Sales M. c. f.	1939	1940	1941
Operation and Maintenance			
Purchased Gas	$ 99,480	$ 113,980	$ 119,170
Transmission Operation	8,840	10,420	11,350
Transmission Maintenance	1,770	4,650	7,050
General Taxes	10,750	11,739	12,283
Regulatory Commission Expense) General Expense—Other)	12,470	12,860	14,330
Federal Income Tax	3,898	3,369	2,665
Company Used Gas—Credit	1,231	1,096	956
Net to Reserves and Return	46,175	37,378	35,608

(Ex. 118, Statement No. 3, Appendix.)

As in the case of "Sales for Resale" in the "*Breakdown of General Expense*" (Ex. 116), as modified by "Revised Exhibit 116" (Ex. 242, Statement No. 3), certain eliminations are made, and in breakdown of "*Regulatory Commission Expense*" (Ex. 242, Statement No. 2), certain additions are made, and both are reflected in "Revenue, Expense and Income," applicable to "Sales for Resale at Cheyenne," as set forth in "Revised Exhibit 118" (Ex. 245, Statement No. 8.) (The additions to 1941 "Regulatory Commission Expense" embodied in Supplement to Exhibit 242, are not reflected in "Revised Exhibit No. 118.")

"*Revised Exhibit No. 118*" (except as above noted) represents Revenue, Expense and Earnings PRESENTLY applicable to "*Sales for Resale at Cheyenne*," and for the years 1939, 1940 and 1941, which are summarized as follows:

Gas Sales M. c. f.	1939 (Actual)	1940 (Actual)	1941 (Projected)
Sales for Resale	494,058	541,634	549,200
Domestic	439,204	487,860	494,200
Industrial	54,854	53,774	55,000
Gross Earnings			
Sales for Resale	182,152	199,899	201,500
Domestic	166,336	184,017	185,550
Industrial	15,816	15,882	15,950
Operation and Maintenance			
Purchased Gas	$ 99,480	$ 117,230	$ 119,170
Transmission Operation	8,840	9,440	11,340
Transmission Maintenance	1,770	4,200	7,040
General Taxes	10,750	11,710	12,310
Regulatory Commission Expense, General Expense—Other	11,990	17,710	17,550
Federal Income Tax	4,163	3,700	2,275
Company Used Gas—Credit	1,231	1,153	956
Net to Reserves and Return	$ 46,390	$ 37,062	$ 32,771

(Ex. 245, Statement No. 8, 242, Statements Nos. 2 and 3, Appendix.)

RATE OF RETURN (Ex. 120).

Arthur H. Bosworth, of Denver, testified in behalf of the Company on Rate of Return. (Vol. 29, pp. 3987-4095; Vol. 30, pp. 4098-4107.)

The witness graduated from Sheffield Scientific School—the Engineering Department of Yale University, in 1908. He immediately thereafter entered the employment of a firm of Denver investment bankers, and, during the early years of such employment, traveled throughout the Mountain states gathering municipal statistics and purchasing

municipal bond issues, both at public and private sale. In 1914, he became a member and Vice-President of a banking investment firm in Denver, and was engaged not only in the sale of municipal bonds but in corporate issues generally and nation-wide. In 1916, he founded the firm of Bosworth, Chanute & Company, now Bosworth, Chanute, Loughridge & Company, as the head thereof, and has continued as the head of that firm until the present time. (Vol. 29, pp. 3987-3988.)

He is a Director, Vice-President, and member of the Executive Committee of the Denver Union Stock Yards Company (one of the important livestock markets of the United States); Director of the Daniels & Fisher Stores Company (one of the leading department stores in the city of Denver); Director of the Denver Fire Clay Company (manufacturers of refractories and wholesalers of chemicals, etc.); Director of the Petroleum Finance Corporation of Texas (engaged in the exploration and producing branch of the oil industry); Director of Fox Inter-Mountain Theatres, Inc., (engaged in the operation of motion picture theatres in the Rocky Mountain States); and Chairman of the Board of Northern Oklahoma Gas Company (a natural gas pipeline and distributing company serving Ponca City, Oklahoma, and nearby points). Has been Director of the First National Bank of Denver, but retired therefrom upon the passage of the federal law prohibiting an investment banker from holding a directorship in a national bank. For many years he was Director of the Gardner-Denver Company of Quincy, Illinois, and Denver, Colorado, large manufacturers of rock drills, pumps, compressors, etc., and is at present Director of the Strawn Realty Corporation, which owns the Railway Exchange Building and the United States National Bank Building in Denver. (Vol. 29, pp. 3988-3990.)

The investment banking company, of which he is President, specializes in the handling of municipal bonds and local securities, and participates either as an underwriter or a selling group member in a great many national issues. He is invited, almost without exception, to participate in the distribution of every large industrial or public utility issue which is offered throughout the country. The broad char-

acter of the business of his firm requires the constant analysis of securities to determine whether to participate in offered issues or not.

For many years his firm has been interested in natural gas securities. In 1935, his firm with associates organized the Northern Oklahoma Gas Company; in 1936, they were members of the purchasing group which acquired the capital stock of the Oklahoma Natural Gas Company. The bonds, convertible preferred stock and common stock of this company were distributed by his firm to their customers. They dealt in the bonds and common stock of the El Paso Natural Gas Company; the common stock of the Mountain Fuel Supply Company, and the common stock of the Lone Star Gas Company. In 1938, they participated in and sold a block of Interstate Natural Gas Company, Inc. stock. (Vol. 29, pp. 3990-3991.)

In 1930 and 1935, he was a witness for Denver Union Stockyards Company on rate hearings conducted by the Secretary of Agriculture; and in 1930, a witness at a rate hearing in behalf of the Union Stockyards of Omaha, Ltd. (Vol. 29, p. 3991.)

In his study on the subject of rate return for Colorado-Wyoming Gas Company, he secured specific and official information relating to their operations from the Company. He interviewed the officers of the Company, and a number of other persons, including Mr. William H. Ferguson, Executive Vice-President of Continental Oil Company, with respect to the Wellington Field, so-called, in Larimer County, Colorado. He knows intimately the entire territory served by the Colorado-Wyoming Company, having lived in Denver virtually all his life. His firm has purchased many municipal bond issues in that territory. (Vol. 29, pp. 3991, 4024-4026, 4033-4035.)

With the permission of the Examiner, he incorporated by reference, in Exhibit 120, his previous Exhibit 93, presented in connection with his testimony on the subject of rate of return for Colorado Interstate Gas Company.

In Exhibit 93, at pages 5 and 6, he pointed out certain individual characteristics of the natural gas business and the attitude of investors toward that industry, as follows:

"The natural gas industry differs in one fundamental condition from utility enterprises serving the public with electricity, manufactured gas and water. Companies supplying these services expect to remain in business almost in perpetuity. The life of a natural gas utility depends on the life of its natural gas supply. The greatest hazard facing any natural gas pipe line company is the exhaustion of its gas supply. The natural gas industry is an extractive industry and in some respects is comparable to the oil industry and the mining industry. In a given locality, there is only a limited amount of the product which keeps the enterprise in existence. Sooner or later, the supply will be exhausted and operations will have to cease unless some new supply can be developed. If a new supply can be developed which is rather a remote contingency, and if such a fortunate event should happen, a large amount of capital would be required for the development of the new source of supply and for connections to tie its production into the existing pipe line system.

"Water is a necessity and there is no substitute for it. A water utility knows that there will always be a demand for its service and the history of water companies shows that the demand for water is fairly constant. The electric utility, under prevailing standards of living, does not have to worry about any substitute for electricity—at least so far as domestic consumption is concerned. We, of course, could go back to oil lamps, candles and gas lights, but we will all agree that this will never happen. The gas company, however, sells heating units and these same heating units can be obtained from electricity, coal or oil. This is one reason why the investor does not consider the gas industry as safe as the other classes of utilities mentioned. Another reason is the fact that the utility is handling a highly explosive commodity under high pressure conditions. The natural gas company usually sells a very substantial part of its output to industrial ensumers and fluctuations in business affect the earnings of the natural gas company to a greater extent than is experienced by other public utilities. Therefore, the investor, at the same rate of interest, would prefer to invest his capital in the securities of other public utilities.

"Evidence of the fact that the investor believes that the securities of natural gas companies have more inherent risk than those of other public utilities is found in the fact that certain states which have laws regulating the investments of savings banks discriminate to some extent against natural gas issues." (Note: He refers to the laws of Maine, Massachusetts, Connecticut, and Pennsylvania, illustrating such discrimination.) (Ex. 93.)

(Vol. 20, pp. 2771-2774.)

The witness further testified:

"I know of no other line of busines where the risks or uncertainties are substantially the same as those of the natural gas pipeline business. There are some businesses that are more hazardous, and, of course, some that are much less hazardous. I think investments in this part of the country usually carry a somewhat higher return than is the case in the East or the Middle West."

Also he further testified:

"In the case of the natural gas industry, which is quite different in this respect from water, electric or telephone utilities, competition of other fuels guard the public. If the consumer feels that the charges of the gas utility are more than the service is reasonably worth, he is perfectly free to use coal, oil, or in localities where electric energy is very cheap, to use electricity."

(Vol. 20, pp. 2778-9.)

Continuing, in Exhibit 120 he pointed out (by reference to Ex. 93) the percentage of earnings per share of common stock in the case of nine natural gas companies, which averaged 12.21%. Of the nine companies named, the capitalization of three consisted solely of capital stock, without any funded indebtedness, to-wit, Interstate Natural Gas Company, Mountain Fuel Supply Company, and National Fuel Gas Company, which companies are earning on the market price of their capital stock 8.19%, 8%, and 8.44%, respectively. (Vol. 29, p. 3992).

To demonstrate that earnings of 8% or slightly more are substantially lower than comparable figures for speculative

or highly profitable ventures, a number of well-known mining stocks and oil stocks were cited, with earnings ranging from 11% to in excess of 20%. He also cited beverage stocks and amusement stocks, which are generally regarded as highly speculative. Most of the stocks show earnings per share at market price of from 15% to 30% (Vol. 29, p. 3993).

In Exhibit 120, he carried his study somewhat further (than in Ex. 93) on the ground that "a broader view of the investor's opportunity for the employment of his capital is important in determining as accurately as possible the reasonableness of a rate which is apparently necessary to attract capital to the natural gas industry." In this connection he cited a large number of companies, all of whose stocks are listed on the New York Stock Exchange, as follows:

Four steel companies whose average earnings on the market price of their common stocks is 11.80%; four Aircraft Companies whose average earnings upon the market price of their common stocks is 16.84%; five Machine and Machinery Equipment Companies whose average earnings upon the market price of their common stocks is 15.36%; and 37 miscellaneous companies whose average earnings upon their common stocks at the market price thereof is 10.39%.

All of the companies listed in the classifications above referred to are of the highest standing, and the price quotations are those prevailing on December 4, 1940, upon which prices their earnings as above stated are predicated (Ex. 120; Vol. 29, pp. 3993-4001).

The witness pointed out from the early history of Colorado-Wyoming Company the hazardous nature of the natural gas pipeline business, giving in some detail the original development of the company, the subsequent failure of its gas supply from the Wellington Field, near Fort Collins, Colorado, and the fortunate circumstance that it was able to secure a new and independent source of supply. In this connection he noted the fact that, based upon geologists' and engineers' reports, the Company expected to have an adequate gas supply from the Wellington Field for a period of 15 to 20 years. In connection with his consideration of

the Wellington Field, he consulted William H. Ferguson, Executive Vice-President of Continental Oil Company, and other officials of that company, the owner of the field in question (Vol. 29, pp. 4001-4003, 4024, 4033-4035).

In considering the question of rate of return to which he considered Colorado-Wyoming Company entitled, he called attention to the territory served by that Company, including various cities and towns in nothern Colorado, and Cheyenne, Wyoming, served thereby, the character of such communities and their growth, with all of which facts he is thoroughly familiar. He testified as to the competitive character of the natural gas industry; considered in his study the production of coal in Colorado as a whole and in northern Colorado; and considered the several industrial sales contracts of Colorado-Wyoming Company. He also took into acocunt the size of the industrial load and the size of the various communities served by that Company, ranging from Cheyenne, Wyoming, the largest, with a population of about 22,400, down to the very smallest communities served by that Company (Vol. 29, pp. 4003-4007).

He examined carefully the contract of October 3, 1929, between Colorado Interstate Company and Colorado-Wyoming Gas Company (Ex. 101), this being the contract of sale and purchase through which Colorado-Wyoming Company derives about 98% of its supply of natural gas. He emphasized Article Seventh of that contract, which provides, *inter alia:*

"The Seller shall only be bound to furnish natural gas to the full extent that it may be able to do so through the exercise of reasonable care and diligence in the procuring of natural gas from its gas purchase contracts, and in the transportation thereof through its lines to the point of delivery and at such pressure and for such period of time as natural gas is available * * * and it is expressly understood that this contract is subject to the obligations to sell and deliver natural gas imposed upon the Seller by those two certain contracts heretofore entered into by it with Public Service Company of Colorado and The Pueblo Gas and Fuel Company, both of date of 3rd day of January 1928. It is agreed that in case of shortage, either tem-

porarily, or permanently, of natural gas and necessity for curtailment of service to any classes of consumers, the demands of domestic consumers of the Seller, the Buyer and/or of other distributing customers to which the Seller or Buyer may sell natural gas, are to be preferred over service to industrial consumers and of the amount remaining, deliveries, if any, for industrial consumers served by the Buyer shall be such part as the requirements of such industrial consumers bear to the requirements of industrial consumers of the Seller, the Buyer and of other distributing customers to which the Seller may sell natural gas; provided, however, that such domestic consumers' preference and such right to receive natural gas for industrial users shall not be exercised so as to deprive the Colorado Fuel & Iron Company of the volume of natural gas needed to complete open hearth heats then in jeopardy and to keep its furnaces warm during extreme domestic demand upon the Seller's pipe line, or so as to deprive any other industrial or commercial consumer which requires a small proportion of its normal demand to prevent damage to its appliances."

(Vol. 29, pp. 4008-10.)

The comments of the witness upon this provision of that contract were:

"The above clearly shows that the gas supply of the Colorado-Wyoming Gas Company is subject to the prior requirements of The Pueblo Gas and Fuel Company, The Public Service Company of Colorado, and part of the Colorado Fuel & Iron Company load. This is an unusual hazard to which Colorado-Wyoming is subject. Also, in considering this matter, one should realize that the Colorado-Wyoming system is at the 'tail-end' of the Colorado Interstate line. Every other connection is closer to the source of supply, which is unimportant as long as there is an abundant supply of gas but which may become highly important should the gas supply be insufficient to satisfy all demands, and particularly peak day demands" (Vol. 29, p. 4010.)

And with respect to the priority and preference of domestic consumers over industrial consumers embodied in said contract, he testified as follows:

"A natural gas company, with an inadequate supply of gas, is in a very unfortunate position. True, industrial consumers can be shut off during peak periods, but if these shut-offs are too numerous the customer, in all probability, will use some other fuel. If a domestic consumer cannot secure all the gas he needs he becomes disgusted with the service. An insufficiency of gas almost always makes itself felt during periods of very cold weather—just when the consumer appreciates heat the most. A few unfortunate experiences will cause the customer to discontinue gas service and the entire business of the gas company may be quickly lost" (Vol. 29, pp. 4011-12).

The witness further pointed out that Exhibit No. 66, prepared and testified to by Mr. George I. Rhoades on "Development of Peak Load Obligations and Line Capacity of the Denver Pipe Line," "shows that in 1945 the domestic and regular industrial peak load will be 105,952 M.c.f. and that the total peak load of all classes of gas is estimated at 164,341 M.c.f. The line capacity net, with spare engines out, is 108,000 M.c.f., and the gross capacity, with all engines running, is 125,000 M.c.f. It is not safe, nor is it good engineering practice, to rely on the running of all engines in compressor stations" (See, Table N, Ex. 66, Vol. 29, pp. 4014-15). This "shows that the line capacity is just barely over peak load obligations of domestic and regular industrial consumers; and, therefore, if the volume of sales should be greater than estimated, Colorado-Wyoming Gas Company might be curtailed in 1945 or earlier" (Vol. 29, pp. 4012-13). He then cited facts and figures showing the growth of the Denver house-heating load. From 1930 to 1940, Denver's increase in population was 10.6%, and that rate of growth was more rapid during the year ending September 15, 1940, than in any preceding year since 1930. The city's inventory of dwelling units increased by 2,460 during the year. During the 10-year period there was an increase of 11,410 in the number of dwelling units occupied (Vol. 29, pp. 4013-4016). He then concludes:

"Therefore, it would seem reasonable to estimate that by 1945 there will be 6,000 additional space heating customers in Denver. The peak daily demand of the average house heating customer is approximately 2900 cu. ft.

but in order to be conservative let us use 2500 cu. ft. An increase of 6,000 customers would, therefore, mean an increase in the daily peak demand of 15,000,000 cubic feet."

(Vol. 29, p. 4016.)

In the communities served by Colorado-Wyoming Company, the percentage of increase in population is, in practically every case, greater than in Denver (Vol. 29, p. 4004), and so it is probable there will be a substantial increase in the number of space heating customers on the lines of Colorado-Wyoming in the same 5-year period (Vol. 29, p. 4016).

"With the growth of the peak load of their own system occurring at a time when the peak load for Denver is rapidly increasing, the chance of peak load demand running ahead of the line capacity of Colorado Interstate is very much increased. The increases in volume of sales, referred to above, are based on present normal trends and rate growth. However, the increases might be substantially larger and they might occur earlier, by reason of unforseen developments. Therefore, Colorado-Wyoming is facing a real hazard because its right to gas is subordinate to that of Denver."

(Vol. 29, pp. 4016-4017.)

Without undertaking to appraise the expected tax increases involved in connection with the huge national defense program, the witness concluded:

"'I believe, for the reasons given in this statement, that the Colorado-Wyoming Gas Company is entitled to a somewhat higher return (than Colorado Interstate Company), and, therefore, it is my opinion that the rate of return for the latter company should be 9%.'"

(Vol. 29, pp. 3987-4022; Ex. 120.)

This witness, *Bosworth*, was asked on cross-examination to and did furnish numerous detailed facts and verifications (Vol. 29, pp. 4023-4077; Vol. 30, pp. 4098-4109). He testified that the rate of growth in the number of house-heating customers in the City of Denver, for the year 1940, as estimated in July, 1940, had been exceeded in December, 1940, by more than one thousand customers (Vol. 29, p. 4099).

Cross-examination of Company witness Bosworth, as follows:

Q. Now, then, what did you do with reference to examining the books and records of this company?

A. I am not an auditor.

Q. What information—

A. I wouldn't say I examined the books and records. I asked for certain books and records and they were very kind in getting them out.

Q. Which records did you ask for?

A. I asked for an earnings statement.

Q. Which year?

A. Beg your pardon?

Q. Which year?

A. I have it for some years back in my working papers here. It is about the last ten years.

Q. Do you recall how many years back?

A. I will have to refer to these papers to give it to you exactly.

Q. Yes.

A. The years 1929 to 1939, inclusive.

Q. That is the earnings statement of the company?

A. Yes, sir.

Q. Does that show the earnings of the company for each of those years?

A. It does, yes, sir.

Q. Would you consider that a pretty good earnings statement?

A. What do you mean by "good earnings statement"?

Q. Just what its name implies.

A. It shows it is in black every year, if that is what you mean. They had no deficits in any of those years.

Q. They are in black to start off with?

A. Yes, sir.

Q. How much above the black are they?

A. It varies. The peak year occurred in 1933—I am mistaken. It was 1932 that it was slightly higher—well, 1930, 1931, and 1932 were better years from a standpoint of net earnings than any subsequent years.

Q. That is an earnings statement as per the company's books?

A. That is correct.

Q. Unadjusted?

A. That is correct.

Q. And what year was it when their earnings were the highest?

A. 1930.

Q. What has been their average rate of return?

A. I couldn't give you that figure because as I have indicated in my testimony, I have made no study of their valuation, rate base. Without that I couldn't tell you.

Q. Then you don't relate that earnings statement at all to the company's investment?

A. I don't relate—

Q. As per their books.

A. No. I say that they earned X number of dollars in a certain year. That is what the statement means to me.

Q. In the absence of relating it to the company's investment and its property, how are you going to give that earnings statement any particular weight? In other words, you have just an earnings statement there?

A. That is right.

Q. You haven't attempted to compute the rate of return of that company?

A. No, I didn't attempt to figure their rate of return because I have had no information as to their rate base. Without that this isn't adjusted—this doesn't go. This statement does not show the amount of depreciation taken.

Q. You don't know the book cost of the property as reflected there?

A. I do not. I see the balance sheet. I know the figure at which they are carrying it on the balance sheet, but I don't know whether that is in agreement with what may be the valuation for rate purposes or not.

Q. Did you examine or make a study of the company's dividend record?

A. As I say, I have a statement here of the earnings. In view of the fact that this company's stock is entirely owned by the Public Service Company of Colorado now, and prior to that time it was owned by the Cities Service Company, the dividend record wouldn't carry much weight.

Q. It wouldn't carry much weight with you in preparing this study?

A. No.

Q. It might not carry much weight with reference to

whether anybody would be able to buy any of this stock, but wouldn't it certainly carry a great deal of weight with you in connection with the preparation of this particular study?

A. I don't see why it should, no, sir.

Q. You don't see why it should?

A. No, sir.

Q. As to what the company's dividend record was?

A. No, I don't—in the case of a wholly-owned subsidiary of this sort I don't see how that would have a bearing on this at all.

Q. Did you inform yourself as to that or did you look into that record?

A. I asked about the dividends, I think, that was paid this last year. That came up merely as an incidental matter. I repeat this: When that company is—because that company is 100 per cent owned, it seems to me it is a matter of *whither* it suits them, subject to the regulations of the Internal Revenue Department, as to whether they take any dividends or take every dollar of the earnings. Here is a parent that stands back of that company and says, "If you need more money I am here to furnish it to you. You might as well pass over all of your earnings now."

If that company were an independent company and on its own feet it might say, "We can't afford to pay out all of our earnings as we are apt to need improvements next year. We have to be careful."

There is no question about that.

Q. So the dividend record of this company wouldn't make very much of an impression upon you because of the parent company's close relation to it?

A. That is one reason it wouldn't, yes, sir.

(Vol. 29, pp. 4026-4031.)

* * * * * *

Q. You were giving a very definite hazard to the possible inadequacy of the supply of gas to Colorado-Wyoming, and that relates itself back to where this gas is coming from and how adequate that supply is for the present and immediate future, isn't it?

A. I think not. I think that we got misunderstanding

each other because I was talking in respect to the general situation; first, that the greatest hazard a gas company faces is lack of supply of natural gas.

Q. That's right. That's the first thing I want to get started on.

A. Then, I think I got rambling around from that and I think I didn't make the statement—I didn't intend to make the statement that the Colorado Interstate is in the immediate future faced with insufficient gas supply. Now, apparently you took what I said to mean that.

Q. Well, you don't mean to say, then, that there is any danger facing Colorado Interstate in the immediate future of not having an adequate supply?

A. Not in the immediate future, no, I do not.

Q. And Colorado-Wyoming purchases its gas from Colorado Interstate. Now, where is Colorado-Wyoming's inadequacy in the picture?

A. I think it is a matter of these peak line demands.

Q. What company? You say the peak line demands?

A. On the Denver line of the Colorado Interstate Gas Company.

Q. All right, how is that going to deprive Colorado-Wyoming of its supply of gas, its necessary requirements?

A. I don't say that it is going to do it. I say that there is a hazard of it, and I thought I took about five or six pages here in pointing it out.

Q. Very well. Now let's briefly take those hazards and see. Where do you get the hazard, first of all, that the peak load demands of the Colorado Interstate will interfere with the furnishing of the requirements of natural gas for the Colorado-Wyoming?

A. Well, it is stated in this contract between Colorado Interstate and Colorado-Wyoming, it definitely states that the right to serve Colorado-Wyoming is junior—we'll say subordinate—to the sales to Public Service Company of Colorado, Pueblo Gas and Fuel Company and part of the Colorado Fuel & Iron load.

Q. All right, what provision of those contracts have those definite—

A. I have quoted them here.

Q. Referring to that Article Seventh of your exhibit on Page 14—

A. What page is that? I didn't hear you, Mr. Lange.

Mr. McCreery: Page 14.

By Mr. Lange:

Q. Page 14 of your exhibit.

A. Yes. I have the contracts here in full.

Q. Yes, but the Article Seventh that you set up there, is that the one you rely upon?

A. No. You see before that on Page 13 I summarize this contract of October 3rd.

Q. All right.

A. I'll read it verbatim if you'd like, from the contract.

Q. Let's see, where is there a definite priority given the Public Service Company for service at Denver under that—

The Trial Examiner: Well, now, let me understand. Is the contract that you have quoted on Page 14, Article Seventh; is that the contract that the Pueblo Gas and Fuel Company, dated January 3rd, 1928—

The Witness: No, this is on Page 14, Mr. Examiner.

The Trial Examiner: Yes.

The Witness: Article Seventh of the contract of October 3rd, 1929, and it so states, you see.

This is all part of Paragraph 9 on Page 13—it refers to this contract.

The Trial Examiner: Yes. Well, now, your question, Mr. Lange, goes to what part of that contract dated October 3rd, 1929—gives preference to the other customers; is that it?

The Witness: That is in Article Seventh.

By Mr. Lange:

Q. Show me where that priority exists.

A. On the bottom of the page. You see those dots? It says:

"• • • and it is expressly understood that this contract is subject to the obligations to sell and deliver natural gas imposed upon the seller by those two certain contracts heretofore entered into by it with Public Service Company of Colorado and the Pueblo Gas and Fuel Company both

of date of 3rd day of January 1928. It is agreed that in case of shortage, either temporarily, or permanently, of natural gas and necessity for curtailment of service to any classes of customers, the demands of domestic consumers of the seller, the buyer and/or of other distributing customers to which the seller or buyer may sell natural gas, are to be preferred over service to industrial consumers and of the amount remaining * * *"—let me read that directly from this contract.

Q. Very well.

A. In the first place, before you get to Article Seventh here, the first page of the contract starts out with the recital:

"Whereas, the seller"—which is the Colorado Interstate Gas Company—"now has undisposed of and available for sale in and through its pipe line a supply of natural gas in excess of the deliveries there required of it under commitments heretofore made by it and particularly those certain contracts entered into by it with Public Service Company of Colorado and Pueblo Gas and Fuel Company both of date 3rd day of January 1928, and a certain application for natural gas by the Colorado Fuel & Iron Company made to and after agreed modifications accepted by Ford, Bacon & Davis, Inc. and assigned June 15th, 1928 to and accepted by seller with the consent of said Colorado Fuel & Iron Corporation and the seller is now able to deliver such gas to the buyer and the buyer desires to purchase of the seller natural gas."

In other words, they state they had more gas than they need for these contracts.

Q. That's right.

A. Now, even on Article Seventh they go—they even more definitely state that the requirements of those contracts already in existence are prior to the obligations under this contract.

This is on Page 13 of the contract, the middle of the paragraph:

"And it is expressly understood that this contract is subject to the obligations to sell and deliver natural gas imposed upon the seller by those two certain contracts here-

tofore entered into by it with Public Service Company of Colorado and the Pueblo Gas and Fuel Company, both of date of the 3rd day of January 1928."

Q. All right, that particular clause or those particular clauses of that contract won't ever come into existence in so far as becoming active unless there is a curtailment in the supply of gas available to Colorado Interstate?

A. No, sir.

Q. Isn't that true?

A. No, sir.

Q. As long as the supply of gas to Colorado Interstate is adequate.

A. It is a question of getting it through its pipe lines and of satisfying the peak demands of these prior contracts.

Q. Oh, now you have got the capacity of the line, too, in question, or is it just the adequacy of the supply?

A. No, it is a question of getting the supply through the line.

Q. Getting it through the line?

A. Yes, sir.

Q. Has there been any difficulty experienced by Colorado-Wyoming Gas Company—by Colorado Interstate Gas Company to get any of the supply of its gas to its customers?

A. Well, now, when Mr. Sands testified there have been certain interruptions to service and breakdowns—I think five or six of them—are you referring to that?

Q. Well, no. Even those were very few over the history of that system?

A. Very few.

Q. You would consider that that was a pretty good operating record, wouldn't you?

A. Excellent; yes, sir.

Q. Yes. Now, then, you don't dispute the fact that there is adequate gas in the field to supply Colorado-Wyoming for the present or immediate future? I beiieve you stated that.

A. That is correct.

Q. All right, conceding that that is adequate, then you come to the point of whether there is adequacy in facilities to deliver to markets. Is that the next point?

A. Yes, sir.

Q. And you say there is some question about the

adequacy of facilities of Colorado Interstate Gas Company to deliver to its markets?

A. If you will refer to this Exhibit No. 66—I imagine you are familiar with that—Mr. Rhodes' statement.

Q. Which one? Which statement?

A. On peak demand. It is headed: "Development of Peak Load Obligations and Line Capacity of the Denver Pipe Line."

Q. That is the excerpt from Mr.—

A. I am now referring to the exhibit itself. I quoted his table—I mean, I reproduced and referred to his Table N which appears in that exhibit.

Q. And where did you get the impression that the present facilities of Colorado Interstate Gas Company's capacity—the line capacity to deliver is presently inadequate?

Mr. McCreery: I think, Mr. Examiner, there is no such statement in this record that this line is presently inadequate. He is talking about what may develop. I think the exhibit is clear. There is no such testimony in the record, and it is not fair to put a witness up against that kind of inquiry.

The Trial Examiner: I think your question, Mr. Lange, goes a little beyond what Mr. Bosworth has said.

Mr. Lange: This witness has made statements beyond what he has set up in his exhibit. If he has it, why, all right, but—

The Trial Examiner: He has said that he regards this peak capacity or the lack of capacity on peak demands in the line as a hazard.

Mr. Lange: Yes. Well, then, I want to know whether the present capacity to take care of peak days on the Colorado Interstate is what he considers a present hazard.

The Trial Examiner: Yes. Well, that wasn't what you asked him, though, Mr. Lange. I think that is proper.

Did you get the question?

The Witness: Can I get the question again?

The Trial Examiner: Restate it, will you, Mr. Lange?

By Mr. Lange:

Q. I just want to know whether you consider the present capacity of the Colorado Interstate to take care of its deliveries on peak days as a hazard to Colorado-Wyoming Gas Company.

A. Not at present, no.

Q. What about the immediate future?

A. What does "the immediate future" mean? I have said that by 1945 I thought there might be some question.

Q. By 1945?

A. Yes.

Q. And to what extent do you believe that at that time it would become a hazard?

A. Well, if you will refer to this Table N, and by the way, this Table N is at the end of Mr. Rhodes' very interesting statement in which he recites what can be done to build up the capacity of this line to its absolute limit, which would include putting in another compressing station at Colorado Springs, would include more engine and compression capacity at the existing stations, and he sets forth there, you will notice, early in the life of the line, with the stations there, a capacity of 70,000 Mcf., or 70,000,000 feet a day. In 1929 the total peak load demand of all classes of gas was only 58,000,000 feet; so you see they had very adequate coverage not only of the domestic and regular industrial load but all the load.

Then you will see that in two years, a couple of years—in 1931 they built that up by putting in some more compressor capacity. They increased the line capacity to 90,000,000 feet a day. Over here is domestic load, and in 1932 when it was completed they only had 59,000,000 feet a day of domestic and regular peak load demand, and follow it on down here and you see that having done that it has been adequate to take care of the peak demand up to this time.

Q. Yes.

A. Because in 1940 they had practically 80,000,000 peak load obligations on regular domestic business and they had 90,000,000 available, but as this thing is set up, you see it gets a little close there. By reason of additional compressor capacity, they increase their line capacity to

100,000,000 feet a day, and then I should remark that with the spare engines available, with all of the engines and everything they have got, shooting the whole works in, by way of expression, the figures of line capacity are given in the right-hand table, and they get ultimately to a line capacity here with proper reserve engine capacity of 108,000,000 feet a day. Well, you see in 1945, you have practically 106,000,000 feet a day according to this estimate.

Now, the argument that I was making was that this Colorado-Wyoming gas is junior to the right of Denver. Under this estimate—

Q. Well, now, right there: "Junior to Denver," in what respect?

A. In other words, that if Denver needs the gas Denver has the prior right to buy the gas even if Colorado-Wyoming can't get all the gas it needs.

Q. In what respect does that apply to domestic or resale industrials?

A. As I understand it—

Mr. McCreery: The contract speaks for itself, Mr. Examiner. It is recited there. The contracts are cited here, and a matter of legal conclusion is outside the realm of this witness who hasn't claimed to speak with legal qualifications and if he did speak from a legal standpoint it wouldn't be acceptable; so I object to it.

The Trial Examiner: Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Trial Examiner: I think if Mr. Bosworth knows he may state.

The Witness: Well, my understanding is that domestic gas always take precedence over industrial gas.

By Mr. Lange:

Q. Yes. In other words, the domestic on Colorado-Wyoming's line would take precedence over industrial gas on the Colorado Interstate's markets.

A. That might be. I don't know.

Q. The Public Service Company's market in Denver?

A. I don't know.

The Trial Examiner: Well, now, Mr. Bosworth, this Table N includes the peak load obligation of the Colorado-Wyoming Gas Company, doesn't it?

The Witness: Yes, it does.

By Mr. Lange:

Q. This conference that you had with Mr. Rhodes relative to the peak load obligations of Colorado Interstate, you state in fact on Page 17 of your exhibit that you had discussed this with Mr. Rhodes and he in turn told you that he had been supplied with the basic data by Mr. Beardsley.

A. That is correct.

Q. And so those figures that you received from him and that information has come through Mr. Beardsley.

A. No, I didn't receive any figures from Mr. Rhodes at all. I received this exhibit and got that from Colorado-Wyoming Gas Company. I read it carefully and I found that Mr. Rhodes was still in town so I called on him to find out how he had estimated this growth, because it is my contention—at least it is my argument in this statement of mine that the territory in and around Denver is growing at a more rapid rate than the territory in some other parts of the state, other territory served by this line, and that if—as I believe may prove to be the case—Denver grows more rapidly than was taken into account in the preparation of these figures, that then there will be a domestic demand for gas in Denver occurring at a time when Colorado-Wyoming's demands will also be increasing and there may not be an adequate supply of gas at peak periods for Colorado-Wyoming.

Q. Well, did Mr. Rhodes at any time in his statement or in his testimony state that during this period of time through 1947 that there would be any probable inadequacy of supply to Colorado-Wyoming Gas Company on peak days?

A. I asked Mr. Rhodes about this statement. I asked him where he had got the figures for growth and he told me, and I didn't ask him the question that you have just asked me.

Q. Well, then, at what time is it that you say that the possible peak load will be reached on the Colorado Interstate line so as to in any manner interfere with the receipt

by Colorado-Wyoming Gas Company of an adequate supply of gas?

A. I can't fix that time accurately. I have attempted to show in this statement that the number of customers in Denver is growing very rapidly, the number of new buildings. Our city is growing in population. For some years it was not. Back fifteen years ago, why, we were growing at a very slow rate, and it is during the last ten years that we have had any appreciable—any what I would call satisfactory rate of growth here, and most of that has been in the last few years, and it shows—the survey I spoke of shows that the rate of growth in the last year, 1939, was double the average rate for the rest of the years. Now, I have tried to point out here that if that continues that there may not be enough gas to take care of Colorado-Wyoming's needs at the peak.

Q. Well, you don't know, though, or you haven't any idea at the present how far distant in the future that is?

A. I stated that it might occur by 1945. I don't know that it will, no. It is a hazard.

Q. How did you fix that 1945 period?

A. Because in this table you see that it is getting pretty close for this line in 1945.

Q. Did Mr. Rhodes indicate either in his testimony or in any exhibit that he filed that there would be any danger or probability of Colorado-Wyoming Gas Company being unable to get an adequate and sufficient supply of gas in 1945?

A. I didn't hear Mr. Rhodes' testimony. I didn't see any of his exhibits other than this one exhibit which I obtained from the Colorado-Wyoming Gas Company.

Q. And did Mr. Rhodes in his conversation with you tell you that in 1945 the point would be reached where there would be danger in Colorado-Wyoming getting an adequate supply of gas from Colorado Interstate?

A. He stated to me that the figures show very conclusively the way the peak load obligations of domestic regular customers, has steadily grown, and in estimating the future here you see that they get up very close to the line capacity as it will be after these improvements have been made. I didn't outline or discuss with him the way I was going to use this in this statement. I asked him if I understood this thing correctly, this table correctly,

and I asked him to tell me how he had estimated this growth and he said, "I took figures on growth supplied to me by Mr. Beardsley," and I said, "Did you pay particular attention to the growth in Denver and in Northern Colorado?" I said, "In my judgment that section of the state—Denver and Northern Colorado—is growing more rapidly than the rest," and he stated that he felt that Mr. Beardsley had estimated the general growth, but was not specific.

Q. So you then assumed from that information given to you, as well as from the study of Mr. Rhodes' exhibit and this table, that in 1945 the danger point would be reached?

A. Yes, sir. That was my conclusion.

Q. That was your conclusion?

A. Yes, sir.

Q. And based on that information that you just related?

A. No, based on the statement in my testimony, the source of information with reference to growth.

Q. Do you know what the capacity of this line is to deliver gas on peak days?

A. I do. It is stated in this table what it is right now. In 1940 it is 90,000,000 feet a day.

Q. Well, the table you refer to prepared by Mr. Rhodes goes down through 1947, doesn't it?

A. Yes, sir. It is projected into the future to 1947.

Q. Why did Mr. Rhodes project it through 1947?

A. I don't know why he picked that particular period, except that I would imagine that it is about the 20-year period of the Public Service contract and also the contract with Pueblo Gas and Fuel and Colorado Fuel & Iron, that the service was started early in 1928.

Q. Yes.

A. —in January as I recall it. What was it, January 3rd, 1928, something like that? So this would give the 20-year period covered by this contract. Now, that's what I inferred.

Mr. Rhodes didn't state that to me, that is why I imagine this table covers that. That apparently would be the case.

Q. So in determining the extent of this hazard, the capacity of the line of Colorado Interstate to deliver gas under peak load conditions to Colorado-Wyoming, that it comes into the picture in 1945?

A. Repeat that again.

Q. In other words, in relating this hazard in the rate of return study, you are of the opinion that by 1945 the peak load obligations of Colorado Interstate will be such that the capacity of its line will not be able to deliver to Colorado-Wyoming an adequate supply of gas?

A. I say that there is a hazard there. Whether it is going to occur in 1945, I don't know. It could come sooner. It might not come that soon, but the hazard should be *reconed* with in considering what is a proper rate of return. It is much more hazardous, I think, than if they provided that the Colorado-Wyoming Gas Company is going to have preference over Public Service Company of Colorado. There may not be enough gas for everybody available, but if in case of any insufficiency, they were going to give gas to Colorado-Wyoming first and the Public Service Company of Colorado can wait; then I would say that that was a very much better situation for Colorado-Wyoming, and I am pointing out that they don't have that. They don't even have equality with Public Service of Colorado. They a e eating at the second table when it comes to this gas supply.

The Trial Examiner: We will stand in recess for five minutes.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

The Trial Examiner: The hearing will be in order.

By Mr. Lange:

Q. Mr. Bosworth, in your previous testimony you gave in connection with Colorado Interstate Gas Company, I believe you stated that an ideal situation with reference to natural gas companies is where they have their own supply of gas and control their market, is that what you consider the top situation?

A. That is right.

Q. It is an ideal one and in such a situation their financial requirements can be most easily met and that situation is considered most favorable in the money market?

A. That is right.

Q. All right. In this company we have found that there is no question about the supply of the gas being there. We have come to a point now of the mechanical

means of getting it to the Colorado-Wyoming Gas Company. You have some doubt about the—strike that.

You bring in a hazard there because of this possible mechanical difficulty in getting the gas to the Colorado-Wyoming Gas Company in 1945 and thereafter?

A. You have a pipe line built at a very large cost which comes to Denver, and in 1945 or thereabouts, according to Mr. Rhodes' Table N, you have only about two million feet of excess capacity. I was trying to point out that a growth here in Denver of six thousand consumers would—

Mr. McCreery: Of house heating consumers.

The Witness: Of space heating consumers, picking a figure of 2500 feet per day as the peak of each space heating consumer, would call for 15,000,000 feet a day. If you try to carry 15,000,000 feet a day where you have a capacity to carry 2,000,000 feet a day you will have difficulty.

By Mr. Lange:

Q. All right.

A. That is a hazard. I don't say it is going to happen, however, I think it is a hazard that should be considered in a rate of return.

The Trial Examiner: Mr. Bosworth, did you know that Mr. Beardsley did not give consideration to the growth of Denver in making his estimates?

The Witness: That is the only reason I went to see Mr. Rhodes, to find out if he had; if he had, I didn't think it proper for me to come along and figure it twice. He told me that Mr. Beardsley had taken it into consideration in a general way—had taken into consideration in a general way the growth very largely based on the way the growth had come along in the past and he was projecting it in the future. I said that I did not think he was specific.

The Trial Examiner: When he said Mr. Beardsley considered it generally, he meant, did he not, that he considered it generally along the territory served by the Denver pipe line?

The Witness: Yes, sir.

The Trial Examiner: You may proceed, Mr. Lange.

By Mr. Lange:

Q. Now, then, that is a mechanical—strike that.

That is a hazard based on mechanical inadequacy? That is what it would be?

A. I don't know whether it would be mechanical inadequacy. It is a limitation of the capacity of the pipe line. I think that expresses it more accurately.

Q. Very well. Then you come to the other end of your ideal situation and that is a definite market that the company itself sells to? You leave it the way you put it where the company itself distributes gas?

A. Distributes gas. I pointed out from the investor's standpoint—the investor thought there was better investment qualities in a situation like that than where you have a pipe line company that has no control over its market.

Q. That is right. Have you gone into it purely from the investor's standpoint now?

A. That is right.

Q. Very well. Isn't that the very situation that obtains with this company?

The Trial Examiner: You mean now, Mr. Lange, it has control of the market?

Mr. Lange: That is right. We are on the market end of it now.

The Witness: This company who sells gas to the Public Service Company of Colorado—

By Mr. Lange:

Q. All right—

A. Let me finish, if I may.

Q. All right.

A. I perhaps should refer to notes, but my recollection is that the Public Service Company of Colorado furnishes the Cheyenne Light, Fuel & Power Company and Home Gas & Electric Company at Greeley—

Mr. McCreery: May I correct that? It is the Greeley Gas & Fuel Company.

The Witness: The Greeley Gas & Fuel Company. That is a slip of the tongue I made.

By Mr. Lange:

Q. All of these delivery points that you have on Page 11 of your Exhibit—

A. Yes, sir.

Q. —with the exception of Greeley, are they all distribution companies owned and operated by the Public Service Company of Colorado?

A. All of these companies with the exception of Greeley?

Q. Isn't that a fact? Do you know?

A. Practically all of them. There is the Highway Gas Company that runs out of Fort Collins which I do not believe belongs to Public Service Company of Colorado. It is a very small and insignificant part.

Q. Is that on this list on Page 11?

The Trial Examiner: You said Fort Collins, Mr. Bosworth. You meant these towns served?

The Witness: The towns served. This is a little line that runs out of Fort Collins that serves some of that densely populated farming section.

Mr. Lange: Yes.

The Witness: Then, as I say, at Greeley it is the Greeley Gas & Fuel Company.

By Mr. Lange:

Q. Who are the officials of that company?

A. The Greeley Gas & Fuel Company?

Q. Yes.

A. That is owned by a small holding company called the Natural Gas & Electric Co.

Q. The Natural Electric? Who are the officers of that Company?

A. I meant to bring Moody's Manual over this morning, however, I felt that when I was called I wouldn't have to do any more than read my statement, and I thought I would bring over my Moody's Manual this afternoon.

Q. You haven't it here?

A. I haven't the manual.

Q. I wish you would make a note of that with reference

to Greeley Gas & Fuel Company. Has that Company any relationship to Public Service Company of Colorado?

A. The officers have no connection with the Public Service Company of Colorado. I happen to know about that situation. That company has a management contract with Stone & Webster Service for managing its property. I met the management up there a couple of years ago when I went up to go over that property. However, I can't give you the names of the officers.

Q. Or the directors?

A. Or the directors. I think it is all in Moody's Manual. I could telephone the office and get it very quickly.

Q. I don't want to interrupt your testimony now, but if you would please make a note of that.

A. Yes. You want the officers and the directors?

Q. And control.

A. I doubt if Moody's will show the officers and directors of Greeley Gas & Fuel Company but it will show the directors an officers of the holding company. That is what you want?

Q. Yes. So far as Greeley is concerned, the towns listed on Exhibit No. 120, Page 11, are all served by Public Service Company of Colorado, aren't they? Aren't they served by the Public Service Company of Colorado which is the distributing company? With the exception of Cheyenne?

A. Cheyenne Light, Fuel & Power Company.

Q. We will come to that a little later. How about these others?

A. Yes. Of course you have a different situation with Fort Logan and Fort Sheridan. The gas is sold to the War Department—

Q. The United States Government?

A. The United States Government.

Mr. McCreery: You mean Fort Warren, don't you?

The Witness: What did I say? Did I say Fort Sheridan?

Mr. McCreery: Yes.

The Witness: I meant Fort Warren. The gas is distributed by the Army to its own post.

By Mr. Lange:

Q. You are still on Page 11?

A. Yes.

Q. In those towns the Public Service Company of Colorado distributes the gas?

A. That is right.

Q. That gas is purchased by Public Service Company of Colorado from Colorado-Wyoming Gas Company?

A. True.

Q. Of course, Public Service Company of Colorado is in 100 per cent control of Colorado-Wyoming Gas Company?

A. Yes, that is right.

Q. What difference is there in that particular with reference to an investor's inquiry as to market value, where that is concerned, as to whether the Colorado-Wyoming Gas Company distributes in those towns or whether the Public Service Company of Colorado would distribute in those towns?

A. I don't see that it makes the slightest difference.

Q. It is just as if the Colorado-Wyoming Gas Company were distributing in those towns?

A. Yes.

Q. When we come to Cheyenne, the same situation obtains because there is 100 per cent ownership between the companies there?

A. That is right.

Q. So, insofar as all of the markets you named here are concerned for all practical purposes, it would be just as if the Colorado-Wyoming Gas Company distributed it?

A. I think so.

Q. You have that part of the ideal situation there, haven't you?

A. Yes.

Q. Now, then, with reference to your industrial load on this line, do you consider the—strike that.

You have that information stated on Page 12 of your exhibit making reference there to the direct industrial sales, isn't that correct?

A. That is true.

Q. Now, do you know the history of the development of the direct line industrial of this company?

A. I think I know something about it. I don't know all about it, of course.

Q. Did you study the times of attachment of the several industries here?

A. Yes, I did.

Q. All right, what was the industry that first went on the line?

A. The Cement Company.

Q. The Colorado Portland Cement Company?

A. Yes.

Q. That was the company that was originally getting its gas from the Wellington field that you mentioned a while ago?

A. Yes, that is right.

Q. Do you know what the amount in volumes of gas was that that company took out of that field per day while it was getting gas from that field?

A. No, I do not.

Q. Did you ever make any investigation of that?

A. I did not.

Q. You made no study of that—strike that.

You asked the Continental Oil Company officials about that when you talked to them?

A. No. I asked them to explain what had happened and I gave you the explanation they gave me.

Q. They didn't mention anything with reference to the load taken by the Portland Cement Company and the rate of withdrawal of gas to supply that load?

A. No, I did not.

Q. So this load has been on this line ever since the Wellington field brought in gas, and has been on continually, hasn't it?

A. As far as I know it has been on continually.

Q. That is a pretty big industrial customer, isn't it?

A. Yes, it is for this company. It is only about ten per cent of the load of the Colorado Fuel & Iron Corporation.

Q. Well, do you consider this in the same relation that the Colorado Interstate Gas Company considers it in investment—in size of investment? What comparison are you making between Colorado-Wyoming Gas Company and Colorado Interstate Gas Company with reference to size of investment?

A. The only comparison I am making is that this is a big company and a big industrial customer of the Colorado-Wyoming Gas Company—the Colorado Portland Cement

Company. The C. F. & I. is a big customer on the Colorado Interstate Gas Company's line. I say that this is about a tenth of the size of the other. I just bring it out to illustrate my point that this is a very much smaller enterprise than Colorado Interstate Gas Company. You can illustrate the same point in a number of different ways.

Q. You have some small enterprises sometimes that operate very profitably and that investors consider very profitable enterprises, don't you?

A. Absolutely.

Q. Even small ones?

A. That is right.

Q. In fact, a great many of the smaller operating utility companies in the United States are particularly profitable, aren't they?

A. I would say it is the exception more than the rule.

Q. You say that the small operating companies when they are permitted to operate without interference of regulation aren't more profitable and don't operate more successfully?

A. If you are going to suppose a certain set of conditions which I don't think exists, why, then we are just beginning to enter the realms of speculation because I don't believe there is any utility, big or small, that escapes regulation these days.

Q. Well, go back to this company. With an adequate supply of gas beset only with a possible hazard of mechanical difficulty in getting this gas available at some time in the future; and with an adequate or a complete control over its resale market, the fact that it is much smaller than Colorado Interstate Gas Company wouldn't indicate to an investor that it is less profitable, would it?

Mr. McCreery: Just a moment.

This hypothetical question doesn't reflect all of the risks that are stated by this witness. He has talked not only of the risk of delivery but the risk of priority which has not been mentioned in this hypothetical question, and that being so, I object to the question.

Mr. Lange: Let him answer—let him add his opinion about that alleged priority.

Mr. McCreery: You ask the question again, if you will, Mr. Lange.

Mr. Lange: I will just add that particular clause to it.

The Trial Examiner: Perhaps you better restate it.

Mr. Lange: The stenographer can read it and I will add that to it.

(The record referred to was read by the reporter, as set forth above.)

The Witness: In the first place, this company doesn't own its own gas supply. You were referring to some of these companies a few minutes ago that had no bonded indebtedness, that owned their own gas supply, that owned their own pipe lines, and that owned their own distributing system in the cities they served. I don't think this company comes into that class at all.

Q. It doesn't?

A. In the first place it doesn't own its own gas supply, it has a right to purchase gas which is junior to the right of a very much larger company—in fact, I was thinking of Public Service Company alone, but it is also junior to the Pueblo Gas and Fuel Company and to part of the C. F. & I. load, and the contract goes on to say it may be junior to certain industrial loads in which appliances would suffer if it were shut off. It is in a junior position so I would think the investor would certainly take cognizance of that hazard.

Q. Because this happens to be a smaller line?

A. I think the investor prefers size when he can get it, everything else being equal. I think the risk is larger in small enterprises than larger ones.

Q. "Smaller" is a relative term.

A. That is true.

Q. Do you consider this Colorado-Wyoming Gas Company a small system or only smaller in comparison with Colorado Interstate Gas Company?

A. I consider it a small system, a decidedly small system.

Q. A decidedly small system?

A. Yes. As a matter of fact—in stating my qualifica-

tions I mentioned that—I am a director of the Northern Oklahoma Gas Company. It is interesting to note that our sales down there are about the same as the sales here and we consider that a very small situation in the gas field, so I consider this one a small one.

Q. To what companies does your Oklahoma company sell its gas?

A. The only large contract we have as an industrial contract is one with the Continental Oil Company. We own our distributing systems in Ponca City and in Newkirk. We wholesale gas to two or three municipalities at the city gate for distribution but there aren't very many industries in that section. We serve a rather small territory. The only large industry is the Continental Oil Company's refinery at Ponca City.

The Trial Examiner: Mr. Bosworth, you volunteered this statement as to the smallness or the largeness, but in fact in your exhibit that situation was not considered, was it? You considered what you construed to be the risk to the Colorado-Wyoming Gas Company, did you not?

The Witness: I did. I merely remarked that this was a small system—that in general smaller utilities are more hazardous than large ones. That is on Page 13, Mr. Examiner, at the middle of the page just before Paragraph 9. I think that was the reason Mr. Lange asked me the question.

By Mr. Lange:

Q. Do you have in mind an isolated—strike that.

When you speak of that relative term "small or smaller," you have in mind an isolated transmission company that is of this size, of the size of Colorado-Wyoming Gas Company?

A. Which is the isolated transmission company?

Q. That is what I am getting at. Were you thinking of an isolated company?

A. I was comparing Colorado-Wyoming Gas Company with the Northern Oklahoma Gas Company which is not an isolated transmission company.

Q. What control does your company have over its market?

A. We have the control that goes with ownership of distribution facilities.

Q. What distribution facilities do you have?

A. We serve the town of Ponca City which is the largest town in the system.

Q. How large a town is that?

A. About twenty thousand people.

Q. About twenty thousand people?

A. Yes.

Q. What other distribution points?

A. Newkirk.

Q. Newkirk?

A. Yes.

Q. What size town is that?

A. Between two thousand and twenty-five hundred.

Q. All right, what other towns?

A. Those are the only two that we serve directly. There is Fairfax, Burbank, and one or two other small places that we sell gas to at the town border. I ought to have the names in my head but I will have to refer and find out. They are very small places.

Q. Do you have any control over the distribution in those smaller places?

A. Not where we don't own the distribution system.

Q. To get it clearly in the record, how many distribution systems do you own?

A. Ponca City and Newkirk.

Q. Only two?

A. That is correct.

Q. And over the other ones you have no control?

A. That is right.

Q. Where is the delivery point for this industrial you sell?

A. At the refinery.

Q. What do you sell them a year?

A. You mean the amount of gas we sell them?

Q. The volume.

A. Their contract calls for a minimum of two million feet a day and a maximum of, as I recall it, eight million feet. They have been taking recently gas at the rate of about six million feet a day from us.

Q. Six million feet a day?

A. Yes.

Q. Let's see, how much is that a year?

A. We won't run six million feet throughout the year.

Q. Oh, you don't?

A. I imagine about three to three and a half million feet throughout the year. You see there are shutdowns that come along. They may be remodeling their stills or repairing their stills. It is not an absolutely fixed steady load. There are peaks in that, too.

Q. Around an average of three million a day?

A. I think it will average better than three million a day.

Q. All right, now, what other industries do you have?

A. Oh, we have laundries and bakeries and little things like that in the town, but as I have testified—

Q. What does that practically amount to, the total on that?

A. Very little. I can't give you that. It is a nominal amount.

Q. All right, do you—

A. We do a very large househeating business, that is true. That is the popular method of heating houses in Oklahoma.

Q. You don't have the degree days that the Colorado-Wyoming has?

A. No.

Q. Or anywhere near that. Now, still you think that—strike that.

What are the total main line—what is the total main line mileage of your pipe line?

A. We have about two hundred miles of pipe.

Q. Two hundred miles of pipe?

A. Yes. There again this company is not so far again from the size of that, taking the branch lines and all. It is something like two hundred miles here.

The Trial Examiner: Does that include the distribution line?

The Witness: No, I think not.

By Mr. Lange:

Q. What is your total? What are your total sales in volume? What were they last year?

A. Let me get that when I get these names of the officers of National Gas & Electric Corp, I can give it to you in dollars pretty well, but I can't give it to you in feet.

Q. Yes, just the volume, total sales in Mcf., 1939 or 1940.

A. Our fiscal year ends November 30th, so I think I may have it in the office but I can wire and get it for you.

Q. You have these other figures in 1939 for comparison. Let's have them in 1939.

A. You would rather have them in 1939?

Q. That's right.

Now, you say that—

A. As a matter of fact, if you'll—may I just go on to say—

Q. Yes.

A. —that you will notice that when I picked out those three companies which I considered were best from the investor's viewpoint on my testimony on Colorado Interstate—

Q. Yes.

A. —that was Mountain Fuel Supply, Interstate of Louisiana and then National Fuel Gas, I didn't even mention Northern Oklahoma. I didn't mention it throughout the testimony because I felt that it was very small and did not furnish as good an illustration on the points I was making, for that reason, as some of these others.

Q. That was in connection with your testimony with Colorado Interstate?

A. Yes.

Q. Now, then, you say in connection with this company, that it furnishes a comparable example?

Mr. McCreery: I don't believe that there is any such statement in the record. I think the only testimony is that they were about the same in size, but not comparable as an example of anything at all.

By Mr. Lange:

Q. Just comparable in size?

A. You asked me why I considered Colorado-Wyoming a small utility and I went on to say about the size of this other company, Northern Oklahoma, and I consider that a very small utility.

Q. Well, then, we get right back to the original definition that I wanted to get clear in my mind when you used the relative term "size." Now, is it your position that you don't attempt to say that the two are comparable when you speak of the small company; do you just mean it has the same number of lineal feet of pipe?

A. No, I say that they are comparable in size in many respects.

Q. All right, I want to get the comparability that you have in mind, since Mr. McCreery objects to their being comparable. I just want to know what you have in mind.

Mr. McCreery: I wasn't objecting. I just said that there was no such testimony as you assume by your question.

Mr. Lange: All right, I want to ask the witness now what he means by comparability, if it is applicable.

The Trial Examiner: Well, I think he has pretty well indicated that, Mr. Lange.

By Mr. Lange:

Q. Now, then, you use the example then of the Oklahoma Company as also being a small company.

A. Yes, sir.

Q. But you did not attempt to compare it in so far as its markets and volumes of delivery are concerned with this company.

A. That is true.

Q. Now, in your testimony that you gave on Colorado Interstate Gas Company, you referred to a list or a group of stocks and also a number of companies. Is that the testimony that you refer to in your Exhibit 120, on Page 4, where you say:

"As I understand it, the Colorado Interstate Gas Company case is consolidated for trial with the Colorado-Wyoming Gas Company case, and the record shows I testified on December 2nd, last (see Exhibit No. 93), in this hearing on the rate of return which should, in my opinion, be allowed Colorado Interstate Gas Company. Much of the data used in the preparation of my testimony in that case and which was mentioned then, has been helpful in the consideration of the present question."

Then, somewhere in here you point out the fact that that testimony on certain portions of it should be applied here. Where is that in your exhibit?

Mr. Pickett: The next paragraph from where you are reading, Mr. Lange.

By Mr. Lange:

Q. Oh, yes.

"In that testimony, which with permission of the Examiner is made a part hereof by reference, I pointed out that the percentage of earnings per share of stock in the case of nine natural gas companies averaged 12.21 per cent."

Now, then, do you proceed in the same fashion in connection with the assumption—strike out "in connection"—in the assumption in connection with those stocks listed by you in Exhibit 120 beginning at Page 5 on through 9—I say, do you proceed in your analysis there on the same basis as you did in the testimony on December 2nd?

A. I have given the same calculations of earnings per share on the present market price, and these stocks were given in the previous one, if that answers your question, the previous testimony.

Q. On December 2nd?

A. That's right.

Q. Now, how do you arrive at these averages of, for instance, under each of these groups?

A. Well, there are four, the stocks of four steel companies: Bethlehem Steel, per cent of earnings to price, 15.69; Inland Steel is 9.18 per cent; National Steel, 9.77 per cent, and United States Steel is 12.58 per cent.

Now, if you will add those percentage figures and divide by four you will get the average for the four stocks.

Q. Now, you base these always on per cent of earnings, don't you? Is that the primary factor that the investor has in mind, you say?

A. I think it is one of the important factors.

Q. One of the important factors?

A. Yes.

Q. The earnings of the company—is it always the most important factor?

A. I think it is more important than any other single factor.

Q. More important than any single factor?

A. You sometimes get, in considering any security, you sometimes get a situation where it is pretty hard to tell what is the most important factor. There may be two or three that are more or less of equal importance; so when you are generalizing it is a little bit dangerous to make a statement, but I would say that one of the first things an informed investor wants to know in finding out whether he wants to invest in a certain stock is what is it selling at and what does it earn.

Q. Not concerned with what its dividend record has been?

A. He is concerned with that, too, as well as to try to estimate the future, estimate what hazards there are in that industry, and many other things.

Q. He wants to know what that stock has earned in the past, too, doesn't he?

A. That is true.

Q. And he is interested very frequently in what the dividend record in the past has been?

A. Yes.

Q. And sometimes he gives it primary consideration?

A. I wouldn't say that.

Q. What about the A. T. & T.?

A. A. T. & T.?

Q. Yes, what about its earnings record as compared with its dividend record?

A. Well, in recent years its dividends in some recent years have exceeded the current earnings.

Q. Yes.

A. It was a company with a very large surplus and it maintained its dividends throughout the depression, even when earnings were very bad.

Q. That's right.

A. Absolutely right. In that one particular situation I would say that probably your dividend record there carried as much weight with the investor, or more, than the earnings record.

Q. That's right.

A. I don't think that is true, however, with the informed investor.

Q. Well, how do you distinguish—

A. With the public. That is, as we all know, is one of the most popular stocks in the United States and probably has more stock holders than any other American company.

Q. How do you distinguish between the informed investor and the uninformed investor?

A. It is a question of knowledge.

Q. A lot of them thought they were informed and were not, isn't that true?

A. That is always true.

Q. There is no dividing line?

A. That might be true of this witness, too.

Q. In other words, as to whether the market price appeals to one so-called informed or uninformed investor does not always govern. There may be as much importance attached to the dividend record as there is to an earnings record?

A. Yes.

Q. As far as the investor is concerned?

A. You are entitled to that opinion. I still think that earnings are a little more significant than dividends.

Q. All right, this appraisal that you have here, is this intended for the informed or the uninformed investor?

A. Both classes.

Q. Both classes?

A. Both classes.

I think it is proper to remark here that the only object in calling your attention to the stocks that were in the testimony I gave in the Colorado Interstate case and the testimony is to show that very generally well-known corporations are earning substantial amounts of money, and that in considering a rate of return you have to take into—one should take into account the opportunities in other fields. Now we have tried to pick some highly speculative ones. We did in our mining stocks and oil stocks and we have tried to take other groups of stocks here, all of them good stocks in their particular lines, and it is surprising, I think, to many people the fact that you get such high percentages of earnings today.

Q. Now, on Page 12 you refer to the fact that the company's line crosses the towns—or passes through the towns of Lafayette and Louisville.

A. Passes the towns, yes.

Q. Yes, passes the towns.

A. Very close to the city limits, the town limits.

Q. What size towns are those?

A. Louisville probably is about fifteen hundred people and I think Lafayette is around three thousand five hundred.

Q. What is the extent of the coal industry in those towns?

A. Well, it is about the only thing there is there.

Q. The only thing there is there?

A. Very nearly so.

Q. And you still consider that a significant fact that those two towns are not connected to this line?

A. Well, I should think this line would be very glad to have that additional business if it could get it.

Q. I am not asking you that, but in view of the situation that obtains there, you think it is a strange situation that obtains because that town is not served with natural gas?

A. I don't think it is strange, no.

Q. Well, that's all I want to know about that.

Now, then, in connection with any possible coal competition in—strike that.

You haven't considered coal competition in any of the markets of this company as being a significant factor?

A. I think it was a very significant factor when the line was started.

Q. When the line was started?

A. I think now that the business is attached to the line and in view of the statement of earnings for the past nine or ten years or more, I don't think that you need to give great consideration to that hazard.

Q. And so far as you know the company operations have been such that so far as you know this situation discussed, the average user of gas because of interruptions has not obtained on this system—you state somewhere in your exhibit that the user of gas if his service is interrupted he eventually becomes disgusted?

A. That's right.

Q. Page 16:

"If a domestic consumer cannot secure all the gas he needs he becomes disgusted with the service."

A. That is right.

Q. Do you know of any such situation obtaining on the Colorado-Wyoming?

A. No, I think from what I understand, they have given excellent service.

Q. Oh, yes, and they have an adequate gas supply?

A. It is pointed out, admittedly, that they have an adequate supply of gas up to this time.

Q. Yes.

A. I was trying to make clear a hazard which I feel is in front of this company. It exists. It is an existing hazard, and if because of the growth of Denver and an increase in heating and househeating customers in Denver they get beyond the peak capacity of the pipe line, Colorado-Wyoming Gas Company may have an inadequate supply of gas because they have a junior right to it, which has been emphasized probably sufficiently.

Mr. McCreery: You are speaking of peak day demands?

The Witness: Peak day demands. Should that occur, then they might not be able to give good service to customers and they might lose a great deal of business.

By Mr. Lange:

Q. Well, of course, all kinds of things may happen in any kind of industry, isn't that true?

A. Here is something that is fairly definite.

Q. You speak of the earnings, or what is the situation with reference to the stocks of all of these several companies? Every industry that operates has certain hazards that may occur in the operation of that business, doesn't it?

A. Absolutely right.

Q. And there isn't any kind of enterprise that doesn't have some character of hazard?

A. That is right. That is true.

Q. All right, this hazard that you were just speaking of is, as you stated in your previous testimony this afternoon, is apt to come into the picture around 1945 or later?

A. Or earlier.

Q. Provided, you say, the load at Denver gets so heavy or increases to such an extent that then the hazard would come in the picture earlier?

A. It depends on the time when that growth occurs. It could come earlier, yes.

Q. You have a reference in your exhibit concerning—Page 18:

"It would seem reasonable to estimate that by 1945 there will be 6,000 additional space heating customers in Denver."

Where did you get that figure?

A. I got that figure by pointing out the growth in Denver in the last ten years. There has been an increase in occupied dwelling units of 11,000 and some odd. It is in this statement. It is not on that page. Also, I am informed that there are now nearly 16,000 house heating, space heating customers in Denver. I think that is a growth within the last eighteen months of about 2,000. Therefore, I thought that it was quite conservative to say in the next four years you might average 1500 per annum or come to a figure of 6,000.

Q. In arriving at these estimates with reference to what is going to take place in Denver, did you consult with any of the officials of the Public Service Company of Colorado?

A. Which estimates do you refer to?

Q. Well, let's take this figure of 6,000 additional space heating customers coming on about 1945.

A. I didn't talk to anybody connected with the Public Service Company of Colorado on that subject with the exception of Mr. McCreery who I think is counsel for Public Service Company of Colorado as well as counsel for this company. I talked with Mr. Burgess, and Mr. Davis about that—Mr. Shortess, excuse me.

Q. Did you discuss this particular item with Mr. McCreery?

A. I didn't discuss this item with Mr. McCreery, no.

Q. What other phases of this proposed increase in Denver did you discuss with the Public Service Company of Colorado or any of its officials?

A. Any phase of this growth?

Q. Of this proposed increase or this assumed increase in load in Denver.

A. I think I got my figures from—these growth figures I got from this survey.

Q. Don't you think that the Public Service Company of Colorado would have a more accurate estimate of what is going to happen in that connection?

A. You have just pointed out that this company is owned by the Public Service Company of Colorado.

Q. Yes.

A. Therefore, using your line of reasoning in getting this information from Mr. Shortess and Mr. Davis, was I getting it from the Public Service Company of Colorado?

Q. Well, I want to know whether you went to what you thought was the most accurate source. That is what I want to know.

A. I felt that I was getting the information from an accurate source in getting it from the Colorado-Wyoming Gas Company. I didn't get that 6,000 figure in any way, to answer your question a little more directly, from the Public Service Company of Colorado or any official.

Q. Well, from whom did you get it?

A. I got it in talking to Mr. Shortess and Mr. Davis.

Q. Well, how did they arrive at that estimate?

A. Well, to be more accurate, they arrived at the estimate of the peak demand of 2500 cubic feet per day—Mr. Shortess said that when the load first comes on you get the larger houses and the larger load probably and, therefore, while 2900 feet was the average today that in estimating future growth it would be more conservative to use a figure of 2500 feet. I don't think that he gave me the 6,000 increase in customers. I think that I got that from knowing that the increase in the Public Service house heating load in Denver was about 2,000 in the last year to eighteen months and I figured that with the increase that this survey shows that it was safe to estimate that somewhat less than that—1500, and we are estimating here for a 4-year period ahead, and that is the way I got the 6,000 figure.

Q. Well, where did you get this primary figure as to the increase that is obtaining now?

A. I got that from—you mean the 2,000 figure?

Q. Yes.

A. I got that in my talk with Mr. Shortess in the Colorado-Wyoming office.

Q. Where did he get it?

A. I didn't ask him that.

Q. He doesn't serve in Denver, does he?

A. No, he doesn't serve in Denver.

Q. His company, the Colorado-Wyoming Gas Company, did it spend any money surveying the requirements of Denver or its future requirements?

A. No, not as far as I know. I haven't scanned their expenditures. I don't know whether they did or not.

Q. Then you don't know how he could have arrived at such an estimate?

A. I think he, as the general manager of that company, and interested in his gas supply which is junior to the gas supply of Public Service Company of Colorado, is going to follow the developments of the growth in Denver for his own protection. That's what I think.

Q. Well, he isn't just going to speculate on that, is he?

A. I didn't say that he did speculate. I think he knew what he was talking about.

Q. Do you know whether he based that figure of 2,000 on any kind of definite survey in Denver?

Mr. McCreery: Now, Mr. Examiner, the 2,000 figure was a statement of actual growth in the last year or eighteen months. There is no speculation about that at all. That is a definite figure of growth.

The Trial Examiner: You referred to 2500 feet consumption, did you not?

The Witness: He is now talking about the growth of 2,000 customers which I was told had occurred in the last year to eighteen months in Denver.

The Trial Examiner: Oh, I thought you said Mr. Shortess had given you this 2500 cubic feet.

The Witness: That is true, I did, and that is true, but the question was relating to the 2,000 and not the cubic feet of gas, wasn't it?

By Mr. Lange:

Q. Well, I want to know what information you got from Mr. Shortess as to his estimate of this future requirement for additional space heating in the city of Denver.

A. The information he gave me?

Q. Yes.

A. I have already explained that he gave me the 2500 feet as a reasonable estimate of what the peak demand of each customer put on would be.

Q. In Denver?

A. In Denver, yes.

Q. All right, now,—

A. I have explained how I hit on the figure of 6,000.

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* * * * *

Q. You say there is some element of risk in that there may be a possibility of the contract between Colorado Interstate and Public Service of Colorado not being renewed?

A. I think to this extent: If this company has gas at that time which it can and desires to sell, I think Public Service Company will want to purchase gas from Colorado Interstate, but the question of price, there is certainly uncertainty whether Colorado Interstate can secure as good a price as they are now getting. Nobody can tell today.

Q. The users in Denver and vicinity have converted all their equipment for the use of natural gas, haven't they?

A. Not all.

Q. Those who are using it, of course, are using equipment usable for natural gas?

A. That's right.

Q. Where is Public Service Company of Colorado going to get its gas if they don't get it from Colorado Interstate?

A. Gets natural gas?

Q. Yes.

A. They could, of course, go back to manufactured gas if they had to. They wouldn't do it if the natural gas supply were available. There are eight years yet in which new discoveries might come in.

Q. Where?

A. In Colorado.

Q. Do you know of any?

A. Or it might be possible to get it in Wyoming, because there is a very large amount of gas in Wyoming for which there is now no market, or it is conceivable they could get it from the Hugoton field.

Q. Where is the Hugoton field located?

A. In Kansas.

Q. About what distance is that from Denver?

A. Well, roughly, three hundred miles.

Q. Three hundred miles?

A. Yes.

Q. And you know, of course, that such company would have to apply for a certificate of public convenience and necessity?

A. I do.

Q. They would have to make a pretty detailed showing, wouldn't they?

A. Yes, but supposing they said to the Public Service Company, somebody came in—you and I, and we said, "We'll bring gas from the Hugoton field," and we make the arrangements down there satisfactorily, and we come up here to the City Council here and say, "We'll sell you gas at 30 cents."

Q. All right.

A. And Colorado Interstate says, "No, our gas is worth 35 cents. We can't afford to sell it any cheaper," then you go to the Federal Power Commission and say, "We want a certificate." I don't believe under the wording of that Act they would have much trouble in getting that certificate, would they?

Q. You mean you could get the gas at Hugoton field and sell it at the gate here at 30 cents?

A. That is an illustration of what might happen. I made no investigation as to whether they could sell it at 50 cents or 25 cents. I can't testify on that without going into an investigation.

Q. What is the illustration worth if it can't be followed through?

A. To show a hazard in spite of the fact that a certificate has to be obtained from the Federal Power Commision.

Q. A hazard to the Colorado Interstate?

A. Yes, of losing this business.

Q. Then you think that in your experience as a man who has dealt with the securities of natural gas pipe line companies that they could construct a line from the Hugoton field and transport gas into Denver and sell it at 30 cents and make sufficient on it that they can finance such a project?

A. I didn't say that at all. I said if this contract had run out and if we found by reason of the purchases to be made down there and by a careful investigation of the construction costs of such a line, if we found we could sell it at 30 cents, I thought we could get a certificate from the Federal Power Commission.

Q. I am asking you now, as a man that has had experience in selling securities of this character, whether that basis that you gave, on that assumption, that they could construct a pipe line into Denver from Hugoton and make a showing that they could sell gas at the gate here at 30 cents, the project would be feasible, economical, and that you could get investors to invest in such an enterprise.

A. I certainly made no such statement as that, and I didn't make the assumption that it could be done. I said, if it could be done or if the Public Service Company could get its gas from Wyoming or perhaps in Morgan County, Colorado where there is some gas, or some other place, or we may open up some gas around Fort Morgan. There are a lot of possibilities that may take place before 1948.

Q. There is a lot of possibilities of anything liable to happen, but the only certainty about there being an adequate supply of gas in some other area is the Hugoton field at present?

A. I didn't say that. I say, there is just as good a chance of getting the gas in Wyoming?

Q. There is? Where?

A. Southern Wyoming, I believe there is—Hiawatha, North, South & Middle Baxter Basin, Powder Wash Dome.

Q. Would you advise investors to invest in building a pipe line from there into Denver now?

A. I wouldn't do it without a great deal of study and getting expert engineering advice. That hasn't been done.

Q. In other words, you would know about what the reserves and adequacy and the probable life of them would be?

A. I would attempt to arrive at that information, certainly.

Q. And how certain you would be of the Denver market, too, wouldn't you?

A. Certainly.

Q. Both of those would have to be pretty definitely shown

to you before you would attempt to advise anybody of the feasibility of such a project or to put any money into such a project?

A. I certainly agree with you on that.

Q. You haven't made that investigation with reference to either piping it from Wyoming or from Hugoton, have you?

A. No.

The Trial Examiner: Mr. Bosworth, some mention I believe was made by you of the contract with Canadian River Gas Company by Colorado Interstate where the cost of the gas is based on some sort of a cost arrangement.

The Witness: Yes, sir.

The Trial Examiner: Well, in view of that, do you think it would be possible for production to come out of the Hugoton field at any less cost to the pipe line than the cost to the Colorado Interstate?

The Witness: I don't think so.

The Trial Examiner: Don't you think that the Colorado Interstate Gas Company in view of its trained personnel and its management and its present experience could transport this gas at least as cheaply as any company that would come out of the Hugoton field?

The Witness: I should think so, absolutely.

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* * * * *

Q. In other words, where a company produces its own gas and has an adequate supply and owns its own pipe line system and is in control of its market to deliver?

A. That is right.

Q. That is the best possible situation?

A. The best picture you can get.

Q. Isn't that one that obtains right here?

A. No, indeed.

Q. In what way does it not?

A. The Colorado Interstate Gas Company does not own its distributing system.

Q. It doesn't have to actually distribute it if it has markets that it is pretty certain of, isn't that the situation here?

A. "Pretty certain" isn't the same as "certain." Suppose they did own the distributing system in Denver—they would have complete control of the marketing policy. They can put on a drive if they thought it of advantage to get more business. That sort of thing now is in the hands of another company.

Q. Do you know—

A. Now that—I beg your pardon.

Q. Go ahead.

A. Go on.

Q. Do you know anything about this fund that Public Service Company of Colorado is supposed to have available for the developing of its distribution market here?

A. They try to encourage distribution by making a real inducement for them to go out and get it. Whether that could be done as economically in that arangement as it could be done if they owned the same system, I can't testify on that, but I know it is always of advantage for a concern to be completely integrated in nearly every line of business. I think you will agree that if you were considering an oil company from an investment standpoint, not a speculative standpoint, that we would rather own the securities of a company that produced its oil and conveyed it in its own pipe lines and refined and marketed about the same amount of oil it produced. Take the Gulf Oil Company. It was in about that position a few years ago. Pro ration has upset it some but it used to produce, convey, refine and market through its own stations and it hardly knew what was going on with its competitors, which in itself is a much stronger situation.

Q. It is the most ideal situation?

A. That is what I am trying to say. Thanks.

Q. Now, you are still of the opinion that the ideal situation doesn't obtain here in what respects?

A. Because this company doesn't exactly own its own gas supply.

Q. Because it doesn't exactly own its own gas supply?

A. Yes, sir. Colorado Interstate Gas Company does not directly own its own gas supply. It certainly doesn't own the distributing systems that sell it directly to the consumer.

Q. Wasn't this project constructed intended to be one enterprise from the very conception of it?

A. I don't think so at all.

Q. You don't think so at all?

A. I am sure it wasn't.

Q. You don't know whether or not it is controlled by the same people?

A. I have testified on that. You mean that the Public Service Company is controlled by the same people?

Q. I am talking about the source of supply now.

A. Oh!

Q. I am talking about the Canadian River's production of gas as being available to Colorado Interstate for its entire requirement.

A. As I understand it, by contract the Colorado Interstate Gas Company has tied up all of the production of the Canadian River Gas Company. I wouldn't say "tied up," but it has contracted to purchase that production, all of that production that it can find a market for. It in turn sells part of the gas to the Natural Gas Pipeline Company and part of it to other distributors we are talking about.

Q. Where does your element of uncertainty between the two come in? As between the Colorado Interstate Gas Company not having the same ideal situation as if it itself were out in the Amarillo field producing that gas?

A. You have a separate company in between.

Q. It is purely a different corporate entity?

A. Purely a different corporate entity but I wouldn't say that is the only difference.

Q. All right, in what other respect is it different?

A. The main respect I think is that this company isn't in the ideal situation we are talking about, due to the fact that it does not control its distribution—does not own and control its distribution facility.

Q. We haven't gotten to that point on this question. You presented one where the pipe line company produces its gas. Isn't it a fact that in this instance the same interest that controls Colorado Interstate Gas Company controls Canadian River Gas Company?

A. I think that is probably true. I can't testify as to that control.

Q. Then you have one other factor entering into that ideal situation remaining open and that is the marketing of the gas?

A. That is right.

Q. Now, then, you have already stated that the Colorado Fuel and Iron Company and Denver constitutes the major portion of the Colorado Interstate Gas Company's market by a large and major portion?

A. That is right.

Mr. Brock: The Denver line?

Mr. Lange: The Denver line.

The Witness: That is right.

By Mr. Lange:

Q. You have the delivery to the Colorado-Wyoming Gas Company?

A. Yes.

Q. Then those three constitute almost what percent of the total market of the Colorado Interstate Gas Company?

A. I don't know that figure because I don't know it.

Q. Roughly, it constitutes the great bulk of the market of that company, doesn't it? Those three gates?

A. Yes, I am sure of that.

Q. What element of uncertainty is there with reference to those three deliveries?

A. Because they do not control the marketing policies. They are wholesalers and it stops there. If they are a retailer and do a good job, fine; if he doesn't do a good job, what can you do about it?

Q. You are then viewing it in the light that the affiliation that exists between them has no bearing as to the certainty and continuity of that market?

A. I am not assuming that there is any affiliation that exists except the contractual relationship.

Q. Are you assuming that there is none existing?

A. As far as I know there is none existing aside from the contractual relationship; the fact that the Public Service Company of Colorado owns 15 per cent of the stock in the Colorado Interstate pipe line.

Q. Very well. On the schedule—

A. I would like to—

Q. Yes.

A. May I make one remark?

Q. Yes.

A. I had forgotten for the moment, but as I understand it, the Canadian River Gas Company is 100 per cent owned by the Southwestern Development Company. The Southwestern Development Company owns 42½ per cent of the stock of Colorado Interstate Gas Company, so there is a relative difference, I think, between the situation that would exist if the Colorado Interstate Gas Company owned a hundred per cent of Canadian River and the existing situation.

Q. How did you arrive at that conclusion that the difference would exist?

A. As I understood the question you asked me, the purport was "Why isn't it just the same thing as Colorado Interstate owning its own gas supply?"

Q. That is right.

A. I say that to me it is a little bit different because if Colorado Interstate owned 100 per cent of Canadian River, I would agree with you; it would be for practical purposes another thing, although there might be another corporate entity. Here Colorado Interstate doesn't own Canadian River at all. It is 42½ per cent of the stock that is owned by a company which owns 100 per cent of Canadian River, or thereabouts, or there could be a conflict of interests arise that would be very different than if the situation were perfectly simple in that Colorado Interstate owned its Canadian River stock 100 per cent; if they owned 100 per cent of the Public Service Company and 100 per cent of Pueblo Gas and Fuel Company, and if they had no security outstanding, it would be a clean operating company to my mind.

Q. You say there might be a conflict of interest?

A. I would think so.

Q. Do you know of any that has occurred since the project has been in operation?

A. No, sir.

(Vol. 20, pp. 2857-2863.)

Commission Exhibit No. 225 (Appendix this Record).

Commission Exhibit No. 225A (Appendix this Record).

Commission Exhibit 225, 225A.

CHARLES W. KNAPP, JR., a witness for the Commission, presented two exhibits, No. 225 and No. 225A, with respect to rate of return generally, and testified in relation thereto in Volume 74, pages 10,794-10,926; and on cross-examination by Colorado Interstate Company in Volume 83, pages 12,301-12,392; and on cross-examination on behalf of Colorado-Wyoming Company in Volume 83, pages 12,392-12,411.

The witness testified, as follows:

Q. Please state your name.
A. Charles W. Knapp, Jr.
Q. What is your occupation?
A. I am an accountant.
Q. By whom are you presently employed, Mr. Knapp?
A. By the Federal Power Commission.
Q. In what capacity?
A. As principal Examiner of Accounts.
Q. How long have you been so employed?
A. Since December 1938.
Q. December 1938?
A. That is correct.
Q. In what particular branch of work?
A. Well, my duties—in the first place, I am employed by the Division of Finance and Statistics.
Q. You have been in that particular division since your employment by the Federal Power Commission?
A. That is correct.
Q. Do you have with you a statement showing your qualifications in connection with your professional work?
A. I do.
Q. Will you please read that into the record, Mr Knapp?
A. "I commenced work in the year 1920. By 1925 I had taken business courses and completed my high school education through attendance at evening classes. In the fall of 1927 I entered the University of Vermont and studied for the degree of Bachelor of Arts and graduated with that degree in 1931. I majored there in languages and philosophy and was elected to membership in Phi Beta Kappa in my junior year. Following graduation I studied accounting, sat for the C. P. A. examinations and in 1934 obtained a cer-

tificate from the State of New York as a certified public accountant. I am a member of the New York State Society of Certified Public Accountants.

"My experience began in 1921, when I was employed by Babcock and Wilcox Company as a cost ledger clerk. Thereafter I became bookkeeper for a wholesale lumber concern. In January 1925 I obtained employment with Peat, Marwick, Mitchell and Company as a junior accountant, and later during the same year worked on the staff of a smaller public accounting firm, and afterwards as bookkeeper for a silk manufacturing concern. The following year I was again employed by Peat, Marwick, Mitchell and Company in their income tax department for approximately a year, and then accepted a position as an accountant for a large wholesale bakery company, which position I resigned in the fall of 1927 when I entered college.

"For three years while attending college I was employed on the staff of the firm of Francis C. Derby Company, public accountants in Burlington, Vermont, and continued with that firm for over a year after graduation. In the fall of 1932 I was employed by the firm of Arthur Anderson & Co., as a semi-senior accountant, but shortly thereafter my status was changed to that of senior accountant. In the fall of 1933 and thereafter while with Arthur Anderson & Co. I was in charge of audits of the eastern telephone operating subsidiaries of probably the largest independent system of telephone utility companies in the country, and was also in charge of holding and sub-holding company audits and consolidation work for that system. I was also engaged on audits of electric, gas and water utilities during the same period.

"In the fall of 1935 I was employed as an accounting expert by the Federal Communications Commission on its investigation of American Telephone and Telegraph Company. While with that Commission I made an analysis of the principles and methods of consolidation employed in preparation of the published financial statements of the Bell System. I also prepared historical analyses and reports on investments of American Telephone and Telegraph Company in its telephone operating subsidiaries, and collaborated in

the preparation of a report on the financial history of the Western Electric Company, together with other studies and reports.

"In June of 1937 the telephone investigation was terminated and I obtained employment as a senior accountant with the public accounting firm of Allen R. Smart and Company. While employed by this firm I was in charge of the annual audit of United Aircraft Corporation and subsidiaries for the year 1937, and conducted a comprehensive investigation of that client's system of internal control.

"In April of 1938 I resigned to engage in private business as a public accountant, and in December 1938 accepted my present position with the Federal Power Commission. Since that time I have been employed in the Division of Finance and Statistics of the Bureau of Accounts, Finance and Rates with the title of Principal Examiner of Accounts and have been engaged in the study and preparation of reports on accounting and financial aspects of applications filed with the Commission in connection with sales of properties, mergers and consolidations and issuance of securities.

"I have also been engaged in studies and in the preparation of exhibits on the subject of rate of return and have testified as a witness for the Commission on this subject in five rate proceedings, namely, the Safe Harbor Water Power Corporation, Docket No. IT-5494, the Natural Gas Pipeline Company of America and Texoma Natural Gas Company, Docket Nos. G-109 and G-112, the Moline-Rock Island Manufacturing Company, Docket No. IT-5517, the New York State Natural Gas Corporation, Docket Nos. G-114 and G-125, and the Chicago District Electric Generating Corporation, Docket No. IT-5500."

Q. Have you completed the reading of the statement showing your qualifications, Mr. Knapp?

A. I have.

Q. Mr. Knapp, I notice from your statement of qualifications that you have heretofore prepared exhibits on rate of return?

A. That is correct. I have either prepared them or had them prepared under my supervision.

Q. You have given testimony in connection with such exhibits?

A. That is correct.

Q. Have you also in connection with the present proceeding prepared a rate of return study and an exhibit for such study?

A. I have.

Q. I will ask you whether the exhibit you so prepared was in two parts, marked Part I and Part II?

A. It is.

Q. Is this the exhibit I now show you?

A. That is the exhibit.

Mr. Lange: Mr. Examiner, we will ask the reporter to please identify the exhibit, being in two parts. I would suggest that Part II be made a part of the exhibit.

The Trial Examiner: I am wondering, Mr. Lange, if it wouldn't be well to just mark both parts of Exhibit No. 225? Does the exhibit show it is Part I and Part II?

Mr. Lange: It does.

The Trial Examiner: I think that would be less confusing.

Mr. Lange: Perhaps it can be marked Exhibit 225 and Exhibit 225-A.

The Trial Examiner: Very well. Part I of the Rate of Return Study will be marked as Exhibit No. 225; Part II, Rate of Return Study, will be marked for identification as Exhibit No. 225-A.

(Exhibits 225 and 225-A, Witness Knapp, marked for identification.)

By Mr. Lange:

Q. Mr. Knapp, did you also in connection with the preparation of that exhibit prepare a written statement with reference thereto?

A. I did.

Q. Is this the written statement I now show you?

A. Yes, that is the written statement.

Q. Will you please begin the reading of that statement into the record?

Mr. Spencer: Before he commences—were you finished, Mr. Lange?

Mr. Lange: Yes.

Mr. Spencer: Before he commences the reading, Mr. Lange, I assume that our past practice may be followed here, that is to say, the witness may proceed to read his statement without interuption, reserving the right of counsel for respondents to move to strike all or any part of it subsequently?

The Trial Examiner: It will be so understood, Mr. Spencer.

Mr. Lange: That is correct.

Q. Now, Mr. Knapp, will you now proceed with the reading of your written statement?

A. "Introduction

I have been instructed to prepare a rate of return study setting forth the more important facts and factors which should be considered in arriving at a fair and reasonable rate of return for the Canadian River Gas Company, Colorado Interstate Gas Company and Colorado-Wyoming Gas Company.

Definition of "Rate of Return"

The "return" received by a public utility consists of the amount of revenue remaining after deduction of necessary and reasonable operating expenses, rents, taxes, and depreciation and amortization accruals, but before provision for interest, dividends, or additions to corporate surplus. This "return" is ordinarily conceived as the product of a "Rate base" times a given "rate of return." Conversely, the "Rate of Return" may be defined as that percentage rate which, when applied to the rate base, will yield the total, over-all return for the particular utility.

Statement of Principles

It is generally conceded that the basic principles to be considered in determining the reasonableness of a particular rate of return were stated by the Supreme Court in the general rule laid down in the Bluefield decision as follows:

"What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally."

Another fundamental principle was stated by the Supreme Court in United Railways v. West in the following words: "What will constitute a fair return in a given case is not capable of exact mathematical demonstration."

Although other factors doubtless have been considered by various courts and commissions, the underlying principles to be considered in connection with the problem of rate return are probably nearly all covered in the above citations from holdings of the Supreme Court.

Identification of Rate of Return Study.

Based on consideration of the underlying principles set forth above I have made certain studies and have either prepared or have directed and supervised the preparation of certain charts and schedules which have been assembled in two bound volumes, designated as Part I and Part II, respectively, for presentation in the present proceedings as exhibits entitled "Rate of Return Study."

Part I contains data on general interest rates and yields, utility interest rates and yields and recent financing, general

economic conditions, comparative stability of earnings of public utilities and other forms of enterprise, local conditions in the general area of ultimate consumption of natural gas supplied through the pipe line facilities of the companies involved in the present proceedings, and data reflecting the present situation with respect to idle investment funds and the factors contributing thereto.

Part II of the rate of return study, besides containing some general statistics of the natural gas industry, presents facts concerning the ownership; issuance, prices and yields of securities of natural gas pipe line companies.

Rate of Return Study—Part I.

From the Table of Contents of Part I of the study, it will be seen that the charts and schedules contained therein are arranged in several groups or sections. These sections, in the order of their appearance, are as follows:

1. General Interest Rates and Yields; which relates to yields on investments in bonds of domestic corporations and Treasury bonds, and interest rates on 4-6 months commercial paper and 60-90 day time loans.

2. Utility Interest Rates and Yields and Recent Financing; pertaining to interest rates and yields on utility securities and containing information on recent financing by public utilities in general and, in addition, data compiled separately covering new financing by electric utilities during the period from 1935 through September, 1940.

3. Economic Conditions; which gives a general picture of economic conditions both currently and for the period since 1920 as indicated by indexes of wholesale commodity prices, general business activity and, for the period since 1929, data on national income.

4. Comparative Risk; this section giving an indication of the relative risks of public utilities as compared with other forms of enterprise.

5. Local Conditions; containing data on rediscount rates of the various Federal Reserve Banks, and averages of rates charged customers by banks in principal cities of the country. This section also contains data comparing economic

conditions throughout the nation in recent years with those in the State of Colorado and adjacent territory.

6. Idle Money Factors; which relates to the present situation respecting the volume of idle investment funds and the factors contributing to the growth of such funds in recent years.

As previously indicated, each of the sections described above contains data presented through the medium of charts and schedules. The schedules support the charts or, in other words, contain the detailed information on which the charts are based in order to facilitate the reading of the charts. For example, where a schedule number appears on the same line as a chart number in the Table of Contents, the schedule and chart should be read in conjunction with one another. In certain instances, a schedule number appears without a related chart number, in which case the schedule should be read alone.

General Interest Rates and Yields.

Moody's Investors Service publishes a considerable amount of financial data and its publications are accepted and relied upon generally for purposes such as are now being considered. Chart 1 shows Moody's composite bond yield average based on bonds of 120 domestic corporations which carry the four highest bond ratings assigned by Moody's publication. The chart also shows the average yield for the 30 bonds included in each of the four rating groups, namely, Aaa, Aa, A and Baa. There are not always 120 corporations in Moody's compilation and there are not 120 corporations at this time, principally because of the difficulty of finding industrial bonds of the higher ratings.

Chart 1—Chart 1 reflects the range of bond yield averages since 1920. The composite average yield for all bonds included in the data had reached by the end of 1936 the lowest level recorded since 1920, namely, 3.67 per cent. After rising during 1937 and the early part of 1938 to 4.50 per cent in April 1938, a decline took place which, by August 1939, had carried the composite average down to the 1936 low point.

The month of September witnessed a sharp rise resulting

from the outbreak of war in Europe. The composite average moved from 3.67 per cent to 3.95 per cent in that month. Between September 1939 and the year-end, the average declined to the August level.

From December of last year through April of this year the composite average declined from 3.69 per cent to 3.54 per cent. Following the invasion of the Low Countries in May, however, the increase in bond yield brought the average for May to 3.65 per cent, and for June to 3.72 per cent. By August the average had declined to the April level, and for September the composite yield was at a record low point of 3.50 per cent.

Since Chart 1 shows the individual rating group averages from which the composite average is derived, it can be seen that by September 1940 the average yields for bonds of Aaa, Aa and A rating, after advancing about 0.10 per cent in May and June, had also declined to new low levels, these being considerably lower than the levels established in 1936. For example, the low points in 1936 as compared with the yields shown for September 1940, are as follows:

Aaa bonds, 1936—3.10 per cent; September 1940—2.82 per cent;

Aa bonds, 1936—3.28 per cent, September 1940—3.01 per cent;

A bonds, 1936—3.78 per cent, September 1940—3.52 per cent.

On the other hand, the risk factor associated with bonds of Baa rating is reflected by the more pronounced rise in the average yield on such bonds commencing in the latter part of 1937 and culminating in the early part of 1938 than was the case for bonds of higher rating.

The 1936 low point for Baa bonds was 4.52 per cent, the yield subsequently rising to 5.16 per cent in September, 1937, and to 6.47 per cent in April 1938. The yield declined rapidly during the remainder of 1938 to 5.27 per cent in December 1938.

During 1939 the average yield on Baa bonds declined still further but, in December 1939, at 4.92 per cent was still 0.40 per cent above the 1936 low point, in contrast with

the experience of bonds of higher grade. The average yield on Baa bonds continued to decline during the first four months of 1940, but in May increased sharply by 0.20 per cent and in June advanced 0.17 per cent, resulting in a rise of 0.37 per cent over the April average.

This rise compares with that of about 0.10 per cent in the average yield for the higher grade bonds in the same two-months period. From June to September, the Baa average reflected a more substantial decline than was recorded for higher grade bonds with the result that the September average of 4.66 per cent was only 0.14 per cent above the 1936 low point, a decline of 0.26 per cent from the average for December 1939.

Also reflected by Chart 1 is the virtual collapse of the bond market which occurred in 1931 and the continuation of an extreme degree of weakness thereafter for the greater part of three years. In this period bonds most severely affected were those regarded as subject to greater investor risk. It will be observed, for example, that while the yields for Baa and A bonds reached 11.63 per cent and 8.5 per cent, respectively, in this period, the highest yield recorded for Aa bonds was 6.60 per cent and for Aaa bonds was only 5.41 per cent.

The data upon which Chart 1 is based appear in Schedule 1 which will be found immediately following the chart. Page 1 of Schedule 1 contains the composite monthly and annual average yields for each year commencing with the year 1920 on bonds of 120 domestic corporations including bonds of the four highest Moody bond rating groups, namely, Aaa, Aa, A and Baa.

Similarly, Page 2 contains the average yield on bonds of Aaa rating, Page 3 on bonds of Aa rating, Page 4 on bonds of A rating and Page 5 on bonds of Baa rating. Each rating group includes, so far as they are available for inclusion, 30 domestic corporation bonds.

A footnote on Page 5 indicates the source from which the data were taken. The lines on the chart can be readily associated with the data contained in the schedule. For example, Page 1 of Schedule 1 shows that the composite yield on bonds of 120 domestic corporations was 4.50 per cent in April 1938, as reflected on Chart 1.

Page 6 describes the mathematical basis of the yield computations. Monthly yield averages are unweighted arithmetic averages of daily yields computed on the basis of closing prices and calculated to maturity dates. For each rating group the average is based on the bonds included in that group and the composite average is the average of the four rating group averages.

Commencing on Page 6 and continuing on Page 7 of Schedule 1 will be found the key to Moody's bond ratings. For example, bonds of Aaa rating are those judged as representing bonds of the best quality, generally referred to as "gilt edge" because they carry the smallest degree of investment risk. Interest payments on such bonds are protected by large or exceptionally stable margins, changes in which are most unlikely to impair the fundamentally strong position of such issues, and principal is secure.

Bonds of Aa rating rank high but lack one characteri[illegible] or another of the highest type of bond investment. Together with the Aaa group they comprise what are generally known as high grade bonds. Bonds carrying the A rating possess many favorable investment attributes and are to be considered as higher medium grade obligations. Baa bonds are those considered as lower medium grade obligations, i. e., they are neither highly protected nor poorly secured. Such bonds, besides lacking outstanding investment characteristics, in fact exhibit speculative characteristics as well.

Pages 8 to 11, inclusive, of Schedule 1 contain lists of the bonds currently used in Moody's bond yield averages according to rating groups. Aaa bonds, grouped according to classification as Industrials, Railroads and Public Utilities are listed on Page 8, Aa bonds are similarly listed on Page 9, A bonds on Page 10 and Baa bonds on Page 11.

It will be noted that the lists of Industrial Aaa and Aa bonds contain fewer than ten bonds, there being only four bonds in the Aaa group, and four in the Aa group. Similarly, there are only five Railroad bonds in the Aaa group. Moody's explanation, as given on Page 6 of Schedule 1, is that it has not been possible since 1933 to find a sufficient number of representative bonds for these rating groups. However, as previously indicated, the averages for these

groups are given equal weighting in combining them with other group averages.

Chart 2—The purpose of the next two charts is to show that the trend of bond yields is not an isolated phenomenon but is part of the movement of interest rates in general, as indicated by the broadly similar patterns observed in the trend of interest rates on 4-6 months commercial paper and on 60-90 day time loans, as well as in the yields on U. S. Treasury bonds. In other words, the purpose of these two charts is merely to furnish added data regarding the movement of interest rates as such, and not to offer short-term money rates or yields on Treasury bonds, as a measure of a proper rate of return.

Chart 2 shows interest rates on 4-6 months commercial paper and 60-90 day time loans and is based on averages computed by Standard Statistics Company from data appearing in the Commercial and Financial Chronicle. The 4-6 months paper is issued by such seasonal borrowers as Armour's and Swift's and is sold to banks through dealers. The 60-90 day time loans represent bank loans to New York Stock Exchange brokers and are secured by mixed collateral.

Although the 4-6 months paper, contrary to what might be expected, currently carries a lower rate than the shorter-term time loans, there are two factors which may be assumed to effect a higher rate for 60-90 day loans than for 4-6 months paper. These are, first, that the rate for 60-90 days loans is assumed to be more or less fixed by agreement between banks and, second, that a service charge element is presumed to exist by reason of the allowance of substitutions of collateral in connection with brokers' loans.

Current interest rates on both types of loans are extremely low as compared with the levels existing during the period 1920 to 1929. For example, by reference to Schedule 2 it may be seen that the rate on 60-90 day time loans varied from 8.72 per cent in 1920 to as low as 2.52 per cent in 1924 and rose to 8.94 per cent in 1929. The average for that ten-year period was 5.40 per cent, as compared with 1.45 per cent for the ten years following 1929. The rate on 60-90 day time loans now stands at 1.25 per cent, but for a

brief period was 0.50 per cent in 1932 and 0.25 per cent in 1935.

On 4-6 months commercial paper, the average rate for the ten-year period 1920-1929 was 5.00 per cent, while since 1929 the rate has averaged approximately 1-2/3 per cent. The rate on this type of paper remained unchanged at 0.75 per cent from November 1938 through January 1940, but in February declined to 0.67 per cent and in March to 0.63 per cent. Since March the rate has remained unchanged.

Chart 3—Chart 3 shows the yield on U. S. Treasury Bonds due or callable after twelve years, as computed by the U. S. Treasury Department for the period since 1920. This chart portrays a somewhat similar situation as that shown on Charts 1 and 2, the trend being generally downward in recent years.

The low point for the period 1920-1936 was reached about the end of 1936 with a yield of 2.51 per cent, as indicated in Schedule 3. Increasing by April 1937 to 2.80 per cent, the yield subsequently declined, reaching a record low of 2.13 per cent in June 1939.

In September 1939, as in the case of domestic corporation bonds, the yield on U. S. Treasury Bonds reached the highest level of the year, 2.65 per cent, but subsequently declined and for the month of December 1939 was 2.35 per cent. The decline continued in 1940 and in March and April the yield averaged 2.25 per cent. An increase of 0.13 per cent occurred in May 1939, in line with the increase previously noted for corporate bonds in the Aaa, Aa and A groups, but this increase was later cancelled and in August the average again stood at 2.25 per cent. For the month of September, not shown on the chart, the average was 2.18 per cent, and for the week ending October 19, 1940, it was 2.09 per cent, indicating a decline to new low levels.

Undoubtedly the lower yield recorded for Treasury bonds in comparison with Moody's average yield on corporation bonds of Aaa rating may be attributed to the low risk associated with these securities and to the fact that income derived therefrom is in part exempt from taxation.

From the data presented in this section, it is apparent

that in recent months interest rates and yields, generally, have reached the lowest levels witnessed in many years; in fact, they probably have not been lower at any time in the history of the country.

Utility Interest Rates and Yields and Recent Financing.

This section deals with the cost of money as indicated by bond yields, preferred stock yields, and common stock earnings-price ratios, with particular reference to public utilities.

Chart 4—Chart 4 shows Moody's bond yield averages commencing with the year 1934, based on the bonds of 40 public utilities according to Moody's bond ratings. In contrast with Chart 1, which shows declines in yield below the 1936 level only for domestic corporation bonds of the three highest Moody's rating groups, Aaa, Aa and A, Chart 4 shows declines below that level through September 1940 for public utility bonds of all four rating groups. The September 1940 yield averages for public utility bonds in the respective rating groups, as shown in Schedule 4, Pages 1 and 2, are as follows:

Aaa—2.74 per cent, Aa—2.88 per cent, A—3.18 per cent, and Baa—3.94 per cent.

Chart 4 is supported by Schedule 4. The companies whose issues are currently used in computing the average yields shown on the chart are listed in Page 3 of the schedule.

It will be noted by inspection of the annual averages shown on Pages 1 and 2 of Schedule 4 that the average yield on public utility bonds in each rating group declined substantially between 1934 and 1939, the comparative yields and declines being as follows:

Aaa—1934 average, 3.92 per cent—1939 average, 2.88 per cent, a decline of 1.04 per cent; Aa—1934 average, 4.66 per cent—1939 average, 3.03 per cent, a decline of 1.63 per cent; A—1934 average, 5.55 per cent—1939 average, 3.52 per cent, a decline of 2.03 per cent; Baa—1934 average, 7.49 per cent—1939 average, 4.50 per cent, a decline of 2.99 per cent.

Relatively, these declines range from 26.5 per cent for Aaa bonds to 40 per cent for Baa bonds, indicating that investors in public utility bonds have more recently been willing to accept a relatively lower rate of compensation than in 1934 in proportion to the degree of risk assumed.

Another method of measuring the willingness of investors to accept relatively less compensation in proportion to the degree of risk assumed is to compare the ratio of the yield on Baa bonds to that on Aaa bonds. Such ratios computed for the years 1934 to 1939, inclusive, and for the month of September 1940 are as follows:

Period	Baa Yield	Aaa Yield	Ratio of Baa to Aaa Yield
Year 1934	7.49 per cent	3.92 per cent	1.91
Year 1935	5.56 per cent	3.52 per cent	1.58
Year 1936	4.67 per cent	3.21 per cent	1.45
Year 1937	5.09 per cent	3.21 per cent	1.59
Year 1938	5.26 per cent	3.03 per cent	1.74
Year 1939	4.50 per cent	2.88 per cent	1.56
Sept. 1940	3.94 per cent	2.74 per cent	1.44

From the foregoing, it appears that in 1934 the yield demanded by investors on Baa bonds was 1.91 times that required on Aaa bonds. The ratio declined to 1.45 in 1936, increased to 1.74 in 1938, and dropped back to 1.56 in 1939. In September 1940, the ratio stood at approximately the same low level for the period as that recorded in 1936.

Chart 5—Chart 5 shows Moody's bond yield averages for the period since 1920 based on bonds of 120 domestic corporations classified into three groups, namely, railroads, public utilities and industrials. The general trends reflected in this chart are similar to those described in connection with the previous charts.

Starting from the low point for all groups reached in 1936, the average yields increased until midyear of 1938. The rise in yield for railroad bonds in this period was much more abrupt than in the case of public utilities and industrials and carried the yield on railroad bonds to 5.75 per cent, public utility yields increasing only to 4.11 per cent and industrials to 3.55 per cent.

From these points the trend toward lower yields has continued with minor interruptions for all groups, but only in the case of public utilities and industrials have the yields established new low levels. For example, the August 1939 figures were 3.40 per cent (1936—3.69 per cent) for public utilities and 3.21 per cent (1936—3.37 per cent) for industrials.

Railroad yields in August averaged 4.41 per cent, which was still considerably higher than the 3.95 per cent yield recorded for January 1937, reflecting the greater degree of risk attaching to railroad securities from the viewpoint of investors. The rise in yields which occurred in September 1939 had been cancelled before the year-end, and subsequently through April 1940 all yields registered further declines, public utility and industrial bond yields falling to the then lowest levels on record, while railroad bond yields still remained 0.38 per cent above the January 1937 low point.

In May and June, following the invasion of the low Countries, an abrupt rise in yields of all bonds occurred, but this rise was subsequently cancelled, except in the case of industrial bonds, railroad bond yields declining through September to a level only 0.28 per cent above the previous low point in the period since 1920, while public utility bond yields were established at the lowest level on record. The September 1940 averages, as shown in Schedule 5, Pages 1, 2 and 3, were as follows:

Industrials—3.10 per cent, Public Utilities—3.19 per cent, and Railroads—4.23 per cent.

By inspection of the annual averages shown on Page 2 of Schedule 5, it will be seen that the average yield on 40 public utility bonds declined from 6.30 per cent in 1932 to 4.43 per cent in 1935, and levelled off at approximately 3.90 per cent during the years 1936, 1937 and 1938. For 1939 the average was lower, at 3.48 per cent, than for any year since 1920, while the average for the first nine months of 1940, 3.28 per cent, was well below the 1939 average.

Chart 5 indicates that the experience of the industrial group has been somewhat more favorable than that of the

public utilities, especially in recent years, but this may be due in part to the limited number of industrial bond issues available for inclusion in the two highest Moody bond rating groups.

Schedule 5 gives the monthly and annual average yields for the three groups of corporation bonds on which Chart 5 is based, together with a list of the bonds currently included in the groups.

Chart 6—Chart 6 shows annually, for the period since 1921, Moody's weighted averages of yields on newly issued domestic bonds of industrials, railroads, and utilities. The averages shown are based on yields at offering prices of newly issued bonds, calculated to maturity and weighted by the amounts of all new issues floated in any given classification or period. The classification "utility bonds," which includes bonds of light, power, and gas utilities, consists wholly of operating companies. The yields indicated in Chart 6 are not, of course, representative of bonds of the same companies or issues at any one date or during any given period.

This chart shows a generally downward trend since 1921 for all classes of companies in yields on newly issued bonds. The trend was interrupted in 1929 and 1932, but commencing in 1933 and continuing until about 1936 the downward trend was greatly accelerated. In 1937 and 1938 the yields levelled off somewhat, but in 1939 a substantial decline occurred, particularly in yields on new railroad and industrial bond issues.

The 1939 decline in yield on newly issued light, power, and gas utility bonds was fractional, but nevertheless brought that yield also to the lowest point reached throughout the entire period since 1921. There has been superimposed on Chart 6 from Schedule 10 the average yield on newly issued bonds of electric operating utilities beginning with the year 1935, which shows a somewhat more favorable market for bonds of electric operating utilities than for those of light, power, and gas utilities combined.

The chart indicates that from 1921 through 1932 the market for new utility bonds appears to have been some-

what less favorable than for railroad bonds. In 1933, however, this position was reversed and except in the years 1937 and 1938, utility bonds were marketed from 1933 through 1939 on more favorable terms than railroad bonds.

It also appears that from 1921 through 1938 the market for new utility bond issues was consistently more favorable than for industrial issues. A reversal of this situation occurred in 1939 when the average yield on new utility bond issues was 3.45 per cent, as compared with 3.09 per cent on new industrial issues. In this connection, however, attention is directed to Page 1 of Schedule 10 where it is indicated that in 1939 a substantially larger proportion of electric operating utility bond issues consisted of lower medium grade bonds of Baa rating than was the case in prior years, which would appear to account, at least in part, for the failure of the yield on new utility bond issues to follow the yield on industrial issues in that year.

The rapid decline in the yield on newly issued domestic bonds, particularly noticeable since 1934, suggested that the decline could be attributed not only to the course of the bond market itself but also to the quality of the offerings. This assumption is confirmed by comparison of the average yield for newly issued utility bonds with the average yield on utility bonds then outstanding of the three highest Moody bond rating groups, i. e., Aaa, Aa, and A.

The line superimposed on Chart 6, showing the average annual yield from 1934 to 1939 on 30 utility bonds carrying these Moody ratings, very closely conforms to that showing the yield on newly issued utility bonds, except in 1939 for the reason above noted, and indicates that a very large proportion of the utility bonds offered during that period consisted of higher grade bonds.

Schedule 7—This schedule reflects annual yields on a group of electric operating utility preferred stocks during the period of eleven years from 1929 to 1939, inclusive, based on averages of yearly high and low market quotations. The issues included in this exhibit comprise all electric operating utility preferred stocks shown in Schedule 19 of a Federal Communications Commission publication

issued June 15, 1938, for which preferred dividends and prior requirements were earned in excess of 1.50 times in 1938, and for which market quotations for each year in the period 1929-1939 were available. The title of the publication referred to is "The Problem of the 'Rate of Return' in Public Utility Regulation."

Schedule 7 reflects a definite upward trend through 1933 in yields demanded by investors on preferred stocks, and a definite downward trend in the years 1934, 1935 and 1936. After 1936 investors' demands fluctuated within a narrow range at approximately the 1936 level. Expressed in terms of an index based on the 1929 average of the yields on the 16 preferred stocks as equal to 100 per cent, the average yield advanced to 106 in 1931, to 117 in 1932, and to 140 in 1933. In 1934 the average declined to 125, and fell to 103 in 1935. In 1936 the average was about 15 points lower at 88 and, with minor fluctuations in the years 1937 and 1938, stood at 86 in 1939, for which year the average yield demanded by investors was lower than for any other in the 11-year period.

Expressed in terms of per cent yield, the unweighted arithmetic average yield on the 16 preferred stocks increased from 5.74 per cent to 8.04 per cent between 1929 and 1933, declined to 5.10 per cent between 1933 and 1936, and was 5.19 per cent for 1937, 5.27 per cent for 1938 and 4.96 per cent for 1939.

Schedule 7-A—This schedule reflects yields on electric operating utility preferred stocks and number of times preferred dividends and prior requirements are earned based on averages of high and low market quotations for the first nine months of 1940, with earnings coverage based on income for the latest twelve months for which reported.

Schedule 7-A contains a list of 22 preferred stocks and, as indicated in the footnote, includes all electric operating utility preferred stocks shown in Schedule 19 of the previously mentioned publication of the Federal Communications Commission, for which preferred dividends and prior requirements were earned in excess of 1.50 times in 1938.

Examination of this schedule will show that of the 22

preferred stocks listed, two issues were selling to yield from 3.90 per cent to 4.00 per cent to investors, three issues to yield between 4.00 per cent and 4.25 per cent, four issues to yield between 4.25 per cent and 4.50 per cent, four issues to yield from 4.50 per cent to 5.00 per cent, five issues to yield between 5.00 per cent and 5.50 per cent, and four issues to yield from 5.50 per cent to 6.02 per cent. In no instance did any issue sell on a basis to yield in excess of 6.02%. Twelve of the 22 issues reflected yields of 4.74 per cent or lower on the basis indicated. For eight of these twelve issues, preferred dividends and prior requirements were earned in excess of 2.50 times, and with respect to eight of the issues yielding in excess of 4.74 per cent such requirements were earned less than two times.

The unweighted arithmetic average of yields on the 22 preferred stock issues shown in Schedule 7-A is 4.82 per cent, as compared with the 1939 average of 4.96 per cent for the 16 issues shown in Schedule 7. The nine-months average of 4.87 per cent for the 16 issues in Schedule 7 which are also included in Schedule 7-A reflects a continuation in 1940 of a somewhat downward tendency in electric operating utility preferred stock yields.

Schedule 8—This schedule reflects annual earnings-price ratios, that is, the per cent of net earnings per share to market price, on a group of electric operating utility common stocks during the period of eleven years from 1929 to 1939, inclusive, based on averages of yearly high and low market quotations and published annual earnings per share of common stock. The issues included in the exhibit comprise all electric operating utility common stocks shown in Schedule 26 of the previously mentioned publication of the Federal Communications Commission issued June 15, 1938. The stocks listed from such publication include only those common stocks which are held by the public to the extent of at least 5 per cent of the number of shares outstanding.

Schedule 8 reveals that, on the average, from 1929 through 1932 there was a definite upward trend in common stock earnings-price ratios on these common stocks. In other words, during this period, investors demanded that increasing earnings be available for common stock per dollar

of market price. In terms of an unweighted arithmetic average, the average earnings-price ratio for the group of 14 common stocks was 4.06 per cent in 1929, and increased in the three succeeding years, rising to 4.59 per cent in 1930, to 5.95 per cent in 1931, and to 7.74 per cent in 1932, the latter ratio being the highest reflected in any year during the eleven-year period.

In 1933, investors' demands abated somewhat, the average earnings-price ratio declining to 7.02 per cent. In 1934 the ratio rose to 7.57 per cent, but declined to 7.32 per cent in 1935 and to 5.89 per cent in 1936. In 1937 and 1938 the ratio advanced to 6.77 per cent and 7.42 per cent, respectively, but in 1939 declined again and was 7.04 per cent for that year.

It will be observed that during the eleven-year period the average did not exceed eight per cent in any year. Aside from the two years 1929 and 1930 for which the average was less than five per cent, there were two years for which the average was less than six per cent, one year 1937, for which it was 6.77 per cent, and five years for which the average was above 7 per cent, the highest average, as above stated, being 7.74 per cent in 1932. The simple average ratio for the last four years of the period was 6.78 per cent.

Schedule 8-A—This schedule reflects earnings-price ratios of electric operating utility common stocks and the per cent of gross income available for common stock based on averages of high and low market quotations for the first nine months of 1940, and on twelve-months' earnings per share as published in the latest quarterly reports.

Schedule 8-A contains a list of 14 common stocks and, as indicated in the footnote, includes all electric operating utility common stocks listed in Schedule 26 of the previously mentioned publication of the Federal Communications Commission, of which at least five per cent of the issue was outstanding in the hands of the public.

Inspection of data contained in this schedule will show that the earnings-price ratios of the 14 common stocks listed were as follows: one at 4.98 per cent, one at 5.65 per

cent, three from 6.00 per cent to 7.00 per cent, five between 7.00 per cent and 7.75 per cent, two at 8.00 per cent, one at 8.67 per cent, and one at 9.31 per cent. Ten of the fourteen issues reflected earnings-price ratios of less than 7.75 per cent on the basis indicated. It will be noted that for three issues selling on a basis of 8 per cent or more the proportion of gross income available for common stock falls below 50 per cent.

The unweighted arithmetic average of the earnings-price ratios of the fourteen common stock issues shown in Schedule 8-A is 7.29 per cent, as compared with the 1939 average of 7.04 per cent and the 1938 average of 7.42 per cent for the same issues shown in Schedule 8.

Schedule 9—Schedule 9 presents annual information on the volume of all corporate financing in the United States since 1934, and the portion thereof representing financing by public utilities, as compiled by The Commercial & Financial Chronicle. The total volume of financing in each year is segregated to show the portions representing new capital and refunding issues, and subdivisions of the amounts representing new capital, refunding and total corporate financing disclose the proportionate amounts of long-term bonds and notes, short-term bonds and notes, preferred stock and common stock issues comprising the total, both for all corporate issues in the United States and for the portion thereof representing security issues of public utilities.

The total amount of new corporate issues in the United States during 1934 was 491 million dollars, for 1935—2,267 millions, for 1936—4,632 millions, for 1937—2,434 millions, for 1938—2,139 millions, for 1939—2,179 millions, and for the first nine months of 1940—1,674 millions, the total for the entire period being 15,816 millions. Of this total, 7,596 millions, or 48 per cent, represented financing by public utilities. By years the proportions of the total of public utility security issues to all corporate issues in the United States were: 1934—32.3 per cent, 1935—56.6 per cent, 1936—45.9 per cent, 1937—34.0 per cent, 1938—57.2 per cent, 1939—60.5 per cent, and 1940 through September—39.4 per cent.

In this connection, attention is directed to Note 3 on Page 4 of Schedule 9 which indicates that The Commercial and Financial Chronicle, which is the source of the above data on corporate financing, does not classify non-retailing natural gas pipe line companies as public utilities. Securities issued by such natural gas companies are reported by that publication under the heading "Miscellaneous."

The proportion of the total amount of all corporate financing during the period from 1934 to date represented by new capital was 29.8 per cent. New capital accounted for 11.3 per cent of all public utility financing during the same period. By new capital, in this connection, is meant capital obtained for the purpose of additions to plant and property or to increase working capital. By refunding is meant the issuance of new securities for the purpose of retiring existing obligations at or before maturity, or of effecting reductions in dividend rates on preferred stocks.

New capital raised by corporations in the United States during the period from 1934 to date aggregated 4,710 million dollars of which public utility issues accounted for 855 millions, or 18.2 per cent. Of this 855 millions of new capital raised by public utilities, 94.3 per cent was represented by bonds and notes, 4.7 per cent by preferred stocks, and 1.0 per cent by common stocks, whereas the corresponding percentages of new capital obtained from all corporate issues were, for bonds and notes—76.1 per cent, for preferred stocks—10.2 per cent, and for common stocks—13.7 per cent.

The total amount of all corporate issues for refunding purposes during the same period was 11,106 million dollars of which public utility issues accounted for 6,741 millions, or 60.7 per cent. This clearly demonstrates that public utilities have taken advantage of the favorable market in recent years to conduct large-scale refunding operations. In 1939 public utility issues accounted for 70 per cent of all corporate securities issued for refunding purposes. In 1938 the percentage accounted for by public utilities was somewhat higher, at 75 per cent, but was based on public utility refunding issues aggregating 950 millions, as compared with 1,261 millions in 1939.

Public utility financing during the period since 1934 accounted for the following proportions of all corporate issues: long-term bonds and notes, maturing later than five years from date of issue—7,007 millions, or 52.7 per cent of all long-term corporate issues; short-term bonds and notes—158 millions, or 32.5 per cent of all short-term corporate issues; preferred stocks—412 millions, or 32.4 per cent of all preferred stock issues; and common stocks—20 millions, or 2.7 per cent of all common stock issues.

As previously stated, public utility issues of all kinds accounted for 48 per cent of all corporate issues over the entire period under discussion. However, during the years 1937 and 1938 public utility financing accounted for very nearly 60 per cent of all corporate financing in the United States.

Analysis of the various types of securities issued by public utilities during the period covered by Schedule 9 reveals that there were no capital stock issues sold in 1934. Small amounts of preferred and common stock representing new capital were sold in 1935, approximately $4,500,000 of preferred but no common stock issues representing new capital were sold in 1936, approximately $5,700,000 of preferred stock issues and $700,000 of common stock issues representing new capital were sold in 1937, no common stock issues were sold in 1938 and only $300,000 was raised from the sale of common stock in 1939.

In contrast with this record, Page 5 of Schedule 9 reflects the sale of approximately $6,600,000 of common stock and $18,500,000 of preferred stock representing new capital in the first nine months of 1940. The combined total of such issues in 1940 is somewhat in excess of the aggregate of all preferred and common stock issued for new capital purposes during the entire preceding six-year period.

Schedule 10—This schedule contains a summary of all known electric operating utility bond issues, other than bonds and debentures having serial maturities, sold during the years 1935 to 1939, inclusive, and shows that during this period 276 such bond issues were sold aggregating in excess of four and one-half billion dollars. The summary on Page 1 is presented by years and discloses the following

weighted average yields on newly issued electric operating utility bonds based on offering prices to purchasers: 1935—3.81 per cent, 1936—3.48 per cent, 1937—3.63 per cent, 1938—3.43 per cent, and 1939—also 3.43 per cent. The weighted average yield on all issues sold during the five-year period, irrespective of rating, was 3.55 per cent.

Page 2 of Schedule 10 reflects average yields on the same bond issues classified according to ratings assigned by Moody's publications. It is there shown that 104 issues, or approximately 38 per cent of the total number sold during the five-year period, represented bonds of Aaa and Aa rating and 91 issues represented bonds of A and Baa rating. However, it will be observed that in 1939 only one Aaa issue, and three Aa issues were sold in contrast with the larger number of such issues sold in previous years. On the other hand, about one-fourth of the 49 issues sold in 1939 represented bonds of Baa rating and one-fifth represented bonds of A rating, bonds of these two rating groups thus accounting for approximately one-half of the number of electric operating utility bond issues sold in 1939.

The summary on Page 2 of Schedule 10 also discloses that average yields to purchasers have declined since 1936. With respect to bonds carrying the four highest Moody's ratings, yields on issues sold in 1939 were lower than in any other year of the five-year period, such yields being as follows: Aaa—2.75 per cent, Aa—3.08 per cent, A—3.31 per cent, and Baa—3.87 per cent.

Of the 276 issues included in the summary for the five-year period, 74 were issues to which no rating was assigned by Moody's publications. The majority of such issues represented bonds which were privately sold. No rating is ordinarily assigned to bonds which are sold privately inasmuch as there is usually no trading in such issues.

Schedule 10-A—This schedule contains certain details in connection with offerings of electric operating utility bond issues sold during the year 1939. Such offerings aggregated approximately $800,000,000 in principal amount. The weighted average yield to purchasers of these issues was 3.43 per cent.

On Page 1 will be noted an issue of Public Service Com-

pany of Colorado, 3½ per cent first mortgage bonds, due 1964, Rating A, in the principal amount of $40,000,000, which were offered to the public in November 1939, at 102, resulting in a yield to maturity of 3.38 per cent.

There is shown on Page 2 the ten-year 4 per cent Debenture issue of that company, Rating Baa, in the principal amount of $12,500,000, which was also offered to the public in November 1939 at 102, the yield to maturity in this instance being 3.76 per cent.

Schedule 10-B—Schedule 10-B contains a list of all electric operating utility bond issues sold during the first nine months of 1940. The aggregate principal amount of such issues was $419,337,300. There were 40 issues sold during this period, including one Aaa issue sold in July on a 2.73 per cent yield basis, four Aa issues at an average yield of 2.93 per cent, six A issues sold to yield an average of 3.17 per cent, five Baa issues on which the average yield was 3.81 per cent, and two Ba issues sold at an average yield of 4.37 per cent. Twenty-two issues, to which no rating was assigned, were sold in this period of which all but one were sold privately. The weighted average yield of all issues sold was 3.29 per cent, which figure was somewhat lower than the average of 3.43 per cent on newly issued electric operating utility bonds sold during the years 1938 and 1939.

Schedule 11—Schedule 11 presents a compilation of all known preferred stock issues of electric operating utility companies sold in the period 1935-1939, showing the cost of money to issuing companies and yields to purchasers. The average yield to purchasers of such issues was 4.38 per cent for 1935, 4.62 per cent for 1936, 4.63 per cent for 1937, 4.85 per cent for 1938, and 4.99 per cent for 1939. Yields on individual issues in excess of $1,000,000 ranged from 4.09 per cent to 5.95 per cent. For the entire period, the average yield on all issues sold was 4.64 per cent.

Comparison with Schedule 10 indicates the relatively low proportion of preferred stock to bonds issued by electric utilities during the five-year period, new issues of bonds and preferred stock having been sold in proportions of about 25 to 1. However, it should not be inferred that such

a relationship exists between outstanding bonds and preferred stocks in the capital structure of electric operating utilities.

For example, in the volume entitled "Statistics of Electric Utilities in the United States—1938," published by the Federal Power Commission, it is shown on Page IX that for 393 Class A and Class B privately owned electric utilities, long-term debt constituted 52.2 per cent of the total amount of securities outstanding as of December 31, 1938, while preferred stocks comprised 15.4 per cent of the total. In addition, common stocks accounted for 31.6 per cent of the securities outstanding and the remainder, or 0.8 per cent, consisted of premiums, assessments, and so forth, on capital stock.

Schedule 11 shows for each issue the net proceeds per share realized by the issuing company from the sale of preferred stock as well as the offering price per share to the public. In addition, it shows the per cent relationship of annual dividends both to net proceeds and to price paid by public.

For example, a 4½ per cent preferred stock issue of Wisconsin Michigan Power Company was sold in December 1939 at part of $100 per share to yield 4.50 per cent to purchasers. The company realized $96.11 per share as the net proceeds from the sale after meeting all expenses of floating the issue, the dividend requirement of $4.50 per share repsenting an annual cost to the company for preferred stock capital of 4.68 per cent ($4.50—$96.11). The expenses of floating the issue therefore resulted in increasing the annual preferred stock expense of the company over the annual yield to purchasers by 0.18 per cent. Stated another way, the yield to purchasers, 4.50 per cent, plus cost of financing, 0.18 per cent, equals the annual cost to the company for preferred stock capital, 4.68 per cent.

Inspection of Schedule 11 reveals that the weighted average cost of financing in connection with electric operating utility preferred stock issues was 0.12 per cent in 1935 (4.50 per cent—4.38 per cent), 0.15 per cent in 1936 (4.77 per cent—4.62 per cent), 0.15 per cent in 1937 (4.78 per cent—4.63 per cent), 0.19 per cent in 1938 (5.04 per cent—4.85 per cent), and 0.22 per cent in 1939 (5.21 per cent—4.99 per cent).

Over the entire period 1935-1939, the weighted average cost of financing was 0.15 per cent (4.79 per cent—4.64 per cent). In 1939 the cost of financing for four preferred stock issues carrying a 4½ per cent dividend rate ranged from 0.07 per cent (Consolidated Gas Electric Light & Power Co. of Baltimore) to 0.19 per cent (Wisconsin Gas & Electric Co.). These four issues were sold at par or better to yield from 4.00 per cent to 4.50 per cent to purchasers.

Schedule 11-A—This schedule contains details of all known electric operating utility preferred stock issues sold to the public in the first nine months of 1940. The aggregate offering price of such issues was approximately $34,000,000, and the weighted average yield to purchasers was 4.41 per cent, a decline of 0.58 per cent from the corresponding average for the year 1939. It will be noted that a 4 per cent issue of Consolidated Gas Electric Light & Power Co. of Baltimore was sold in August at four points above par to yield 3.85 per cent to purchasers.

Schedule 12—Schedule 12 contains details of all known offerings of electric operating utility common stocks during the period from 1935 through September 1940. Of the five issues listed in this schedule, three were offered to the public during March and April of the present year, the other two issues representing primarily offerings to stockholders in 1935 and 1937, respectively.

In contrast with Schedule 9, Page 5, which reflects the sale of $6,622,520 of new issues of common stock in the months of January to September 1940, Schedule 12 reflects common stock sales amounting to approximately $28,000,000 during the same period. By reference to the footnotes in Schedule 12 it will be seen that only the issue of West Penn Power Company ($4,320,000), and 68,855 shares of the Indianapolis Power & Light Company issue ($1,652,520) fall within the category of new issues. The difference between the sum of the foregoing amounts, $5,972,520, and the above total of $6,622,520 for common stock issues in 1940, is represented by an issue of common stock of Bridgeport Hydraulic Company, a non-electric utility, amounting to $650,000.

For each issue listed in Schedule 12 there are given the

name of the issuing company, the offering date, the number of shares offered, the price to public in dollars per share and the aggregate amount paid by the public, together with the amount of the issuing company's annual earnings per share of common stock for the year preceding the offering date, the per cent of such earnings per share to offering price, and the per cent of gross income available for common stock in the years for which earnings per share are given.

The first issue in Schedule 12 is that of Boston Edison Company (formerly Edison Electric Illuminating Co. of Boston) comprising 82,289 shares of common stock offered to stockholders in the latter part of 1935 at a subscription price of $150 per share. Approximately 94 per cent of the shares offered were taken up by stockholders and the remaining shares were offered to the public at a price of $166 per share. The proceeds were used to retire a portion of the company's outstanding indebtedness. On the basis of earnings per share recorded for the years 1934 and 1935, the average offering price resulted in an earnings-price ratio of between 6.25 per cent and 6.43 per cent. The proportion of the company's gross income available for common stock was 56.85 per cent in 1934 and 61.68 per cent in 1935.

The second issue in Schedule 12 represents an offering to stockholders of Tampa Electric Company in November 1937 to purchase 31,497 shares of the company's common stock at a subscription price of $20 per share. The stockholders subscribed to 30,712 shares, or approximately 97.5 per cent of the shares offered. On the basis of earnings per share recorded for 1936 and 1937, the offering price of $20 per share resulted in an earnings-price ratio of between 11.50 per cent and 11.65 per cent. In this connection it should be noted that the range of market quotations for Tampa Electric Company common stock in 1937 was 25¼—41. It is thus apparent that the price of $20 per share paid by stockholders was well below the then current market price.

The next three offerings listed in Schedule 12 were made in March and April of the present year. In March 1940 a block of 200,000 shares of Commonwealth Edison Company

stock was offered to the public. It was reported that the offering price of 32⅜ was based on the closing price for the stock on the New York Stock Exchange on March 6, 1940.

It is of interest to note that the price range on Commonwealth Edison Company stock from January 1 to March 6, 1940, was 30⅞—32⅝. Accordingly, it may be seen that the offering price was within one-quarter of a point of the highest quotation recorded in 1940 prior to the offering date.

A footnote in Schedule 12 relative to this sale indicates that the stock was offered by a syndicate headed by Dillon, Read & Co. which acquired the shares offered upon conversion of approximately $5,000,000 principal amount of Commonwealth Edison Company convertible debentures purchased from Continental Illinois National Bank and Trust Company of Chicago (each $100 of debentures being convertible into four common shares). The 200,000 shares so offered to the public did not therefore constitute a new issue of securities in the sense that the offering was initiated by Commonwealth Edison Company as a sale of securities to the public. On the basis of 1939 earnings of $2.43 per share, the offering price of 32⅜ resulted in an earnings-price ratio of 7.51 per cent. The proportion of the company's gross income available for common stock in 1939 was 61.69 per cent.

In April 1940, 714,835 common shares of Indianapolis Power & Light Company were offered to the public at a price of $24 per share. Of this number, 645,980 shares represented previously issued common stock which had been held by the Trustee of Utilities Power & Light Corporation, former parent company. The remaining 68,855 shares represented new financing by Indianapolis Power & Light Company, the proceeds from which constituted new capital. Based on 1939 earnings of $2.05 per share, the offering price of 27 resulted in an earnings-price ratio of 8.54 per cent. The proportion of the company's gross income available for common stock in 1939 was 33.95 per cent. In conjunction with its offering of common stock Indianapolis Power & Light company also sold privately an issue of 2,500 shares of 6 per cent cumulative preferred stock as indicated in Schedule 41-A.

West Penn Power Company offered for sale to the public in April 1940 an issue of 160,000 shares of common stock representing new capital. The shares were sold at 27, which price, on the basis of 1939 earnings of $1.62 per share of common stock, resulted in an earnings-price ratio of 6.00 per cent. The proportion of the company's gross income available for common stock in 1939 was 52.85 per cent. In the same month the company offered publicly its first mortgage 3 per cent bonds, Series K, due 1970, Rating Aa, in the principal amount of $3,500,000 at a price of 104½ to yield 2.78 per cent to purchasers, as indicated in Schedule 10-B.

Economic Conditions

Chart 7—Chart 7 shows the range of the composite wholesale commodity price index of the U. S. Bureau of Labor Statistics over the period since 1920, as well as the wholesale price indexes for farm products, foods, and industrial products.

Chart 7 clearly portrays the severe decline in prices which started in 1929 and reached a record low point for the period in 1933. It will also be seen that from March 1933 to March 1937 prices rose steadily, with minor interruptions, the composite index rising from 60 per cent to 88 per cent of the 1926 level during this period. Subsequent to 1937, there was a gradual but steady decline in wholesale prices, with August 1939 indexes at the lowest levels since 1937.

However, in September, 1939, coincident with the outbreak of war in Europe, all indexes advanced sharply. It is of interest to note that wholesale prices of farm products and foods advanced to a much greater extent than prices of industrial products, as indicated below:

	September 1939	August 1939	Net Increase
All Commodities	79.1	75.0	4.1
Farm Products	68.7	61.0	7.7
Foods	75.1	67.2	7.9
Industrial Products	82.1	80.1	2.0

Although the indexes for other commodities registered de-

clines immediately following September 1939, the index for industrial products continued to rise for several months before the upward trend was checked.

From the end of 1939 through August 1940 the index for all commodities registered a net decline of 1.8 per cent, more than half of this decline having occurred since the end of May. The net decline in wholesale prices during the first eight months of 1940 was uniformly distributed among the three classes of commodities. However, fluctuations in prices among the individual commodity groups were wider than those reflected in the combined index.

The fluctuations in farm products prices were wider than in the case of foods and industrial products. From May through August, the farm products index declined from 67.9 to 65.6, or 2.3 per cent, the foods index from 71.4 to 70.1, or 1.3 per cent, and the industrial products index from 82.5 to 82.0, or 0.5 per cent.

Although the trend of wholesale commodity prices has been generally downward since September 1939, prices of the various commodity groups in August 1940 were still somewhat above the August 1939 levels, as disclosed in the following tabulation:

	August 1939	August 1940
All Commodities	75.0	77.4
Farm Products	61.0	65.6
Foods	67.2	70.1
Industrial Products	80.1	82.0

There have been some fluctuations in prices since August 1940, latest figures indicating that for the week ended October 5, the combined index was 77.8, with farm products at 65.5, foods at 70.7, and industrial products at 82.9.

Chart 8—Chart 8 shows the Federal Reserve Board's index of industrial production and the Department of Labor's indexes of factory employment payrolls for the period since 1920, all without adjustment for seasonal variation. The Federal Reserve Board also publishes a seasonally adjusted index of industrial production, as well as an adjusted index of factory employment derived from the unadjusted

indexes computed by the U. S. Department of Labor. For the purposes of this study it was considered preferable to use unadjusted indexes for all three series in order to obtain uniformity. Comparison of the adjusted and unadjusted indexes for industrial production discloses slight variations, but the general pattern of the indexes over a period of time is quite similar. This is because adjustments for seasonal variation are applied to monthly data and cancel out when monthly figures are averaged for a year.

It will be noted that the base period of the index of industrial production is shown as 1923-1925, whereas the index as published uses the years 1935-1939 as the base period.

This change in base period was made in order to permit comparison of the industrial production index with the indexes of factory employment and payrolls for which the base period is also the years 1923-1925.

The Federal Reserve Board recently published a complete revision of its index of industrial production, the revised index being constructed with the average for the years 1935-1939 as equal to 100, whereas in the old index the average for the years 1923-1925 was taken as equal to 100. As a result of the revision, which was carried back through 1919, the new index is derived from 81 individual monthly series directly representing all principal groups of industries in manufacturing and mining, as compared with 60 individual series from which the old index was derived. The index of industrial production was compiled by the Federal Reserve Board for the purpose of measuring changes in the physical volume of the country's industrial output.

Chart 8 indicates that the 1929 peak in industrial production was reached when the index advanced to 134.5 in September of that year. Commencing in October 1929, the index declined with few interruptions until it had fallen to 59.8 in mid-year of 1932.

Following an advance in the fall of 1932, which was largely cancelled in the first few months of 1933, the index advanced to 96.6 in 1933. After several substantial fluctuations, the index commenced to rise late in 1934 and this

rise continued at an accelerated pace which carried the index above the 1929 peak to 143.7 in May 1937.

Thereafter, the index fell abruptly through the remainder of 1937 and more gradually in succeeding months, reaching its next low point in May 1938 at 93.1. From that level the index advanced to 117.2 in November. Following a recession in the early months of 1939, there was a substantial increase in industrial production resulting in the establishment of a new record peak at 144.8 during October and November. After declining to 127.6 in April 1940, the index advanced to 139.1 in July and stood at 135.6 in July. It will be observed that the average level of industrial production in 1939, 124.1, was substantially higher than the average of 101.1 recorded for 1938, but was 5.8 points below the 1937 average.

Chart 8 shows that the general pattern in the trend of industrial production has been reflected also in the indexes of factory employment and payrolls. However, it will be noted that the differences in the index levels for factory employment and payrolls compared to industrial production appear to be considerably broader in the 1937 and 1939 peaks in production than was the case in 1929, indicating changes which may have taken place since 1929 in productivity, in working hours, and in wage rates.

In 1929, at the peak of industrial production, the employment and payrolls indexes reached 110.3 and 114.4, respectively. The lowest levels reached in 1932 and 1933 were 61.0 for employment and 38.3 for payrolls. At the production peaks of 1937 and 1939 the indexes for employment were 111.5 and 103.8, respectively, and for pay rolls were 110.1 and 101.6, respectively. The figures for July 1940 reflect net declines since November 1939 of 4.3 per cent in employment and 5.2 per cent in payrolls. Employment and payrolls indexes for 1939 averaged 96.8 and 90.8, respectively. These averages were higher than those for 1938, but fell short of the levels of 108.6 for employment and 102.5 for payrolls established in 1937.

Chart 9—Chart 9 represents another attempt to depict economic conditions and shows carloadings, steel ingot production and building contracts awarded indexes based on a

computed normal equal to 100. This chart also portrays the effects of the depression commencing in 1929 followed by the recovery movement in 1933 leading up to 1937 and the subsequent decline which continued into 1938.

Starting in the early months of 1938, a considerable rise in all indexes occurred but was reversed late in 1938, this time the decline continuing almost to mid-year of 1939. From that point on, steel ingot production moved rapidly upward, and to such an extent that the index, which stood at 61.1 in May 1939, advanced more than 80 points by December and exceeded the 140 level for the first time since 1917.

This occurrence offers sharp contrast to the record for 1937, in which year the index declined over 80 points in five months, dropping from 119 in August, the peak for that year, to 38 in December. Following December 1939, steel ingot production declined substantially, reaching 80.2 in April 1940, but a shart recovery in May and June cancelled about two-thirds of the loss, restoring the index to a level of 118.7 in June. There are indications that an upward trend is now in progress from that level.

Carloadings also reflected a considerable rise after mid-year of 1939 and were at a higher level at the year-end at 93.2 than in 1937 or 1938. The 1939 index averaged 84.2 which was 8 points higher than for 1938 but 14 points lower than for 1937. The carloadings index declined in 1940 until March from which month the trend was upwards through August. Available data indicate that beginning in the early part of September carloadings began to reflect an increase over August levels.

Building contracts awarded registered net gains in 1939 and the year's average of 62.2 was better than any recorded since 1930. In the first eight months of 1940, the building contracts awarded index has reflected an average increase of 5 points above the corresponding period in 1939.

Chart 10—This chart shows the total amount of national income payments by type of payment by years from 1929 to date, as computed by the U. S. Department of Commerce. A description of these data in some detail is contained in an article which appeared in the October 1938 is-

sue of the Survey of Current Business, but a revised series was published in the October 1939 issue of that publication.

Briefly, the series is intended as an index of the current flow of income to individuals. For this reason the series is not indentical with the annual estimates of national income published by the Department of Commerce. The principal differences are that in arriving at estimates of national income payments, all business savings and employer and employee contributions to Social Security, contributions to Federal retirement, and employee contributions to railroad retirement funds are deducted from national income; and all direct relief payments, veterans' compensation, benefit payments under the Social Security Act, and pensions paid out by private industries and governmental agencies are added. One exception to the foregoing is that business savings in agriculture are included in entrepreneurial income.

The chart shows, as might be expected, that the bulk of national income payments represents compensation of employes. The other major classes of income payments in the order of their importance in proportion to the total consist of entrepreneurial income, dividends and interest, Social Security benefits and other labor income, including pensions, and direct and other relief payments.

The 1929 national income payments are estimated to have been in excess of 81.6 billions of dollars. By 1933 the figure had declined to less than 47 billion dollars, or only 57.3 per cent of the 1929 total. In 1934 national income payments increased to 54 billions, in 1935 to 58-1/2 billions, in 1936 to over 68 billions and in 1937 to about 72-1/2 billions.

From 1937 forward the chart shows for each month a twelve-months ending total in order to disclose the trend. It is indicated that the trend of national income payments was steadily downward through all of 1938 with the result that total income payments for that year were about 6 billion dollars less than in 1937.

Beginning in 1939, however, this downward trend was reversed, and each month during 1939 witnessed a gradual

but consistent increase in total income payments with the result that national income payments in 1939 exceeded the total for 1938 by almost 3-1/2 billions of dollars, although they were lower by approximately 2-3/4 billions than the 1937 total.

The principal increases over 1938 were as follows: salaries and wages—2,216 millions; dividends and interest—605 millions; and entrepreneurial income—439 millions. The upward trend has continued through July 1940 and it will be noted that for the first time since 1937 current estimates of national income payments for the preceding twelve-months period are advancing beyond 70 billion dollars.

In this connection it should be pointed out that the Department of Commerce has made a further revision of its estimates of national income payments for 1929 and later years. The revised totals for each year were obtained from that Department and appear in Schedule 24. It is understood that detailed data on the revised estimates are to be published in the October issue of the Survey of Current Business, which issue, however, was not available at the time of preparation of Schedule 16. Comparison with Schedule 24 will indicate that the revisions were not substantial with respect to the annual totals of income payments.

Chart 11—In any discussion of national income, some means of determining the relative value of the dollar, that is, its purchasing power over the necessities of life, is desirable in order to compare changes in real income as distinguished from cash income. For this purpose, an index of the cost of living may be used. Such an index has been computed by the National Industrial Conference Board to show the trend of living costs of wage-earners' families. The index is based on a comprehensive list of retail prices and rents in five classifications which are weighted according to their relative importance as follows:

Foods, 33; Housing, 20; Clothing, 12; Fuel and Light, 5; and Sundries, 30. Then in the latter group are included such items as household furnishings, reading materials,

recreation and tobacco, as well as organization dues, medical care, carfare, drugs, and so forth.

By obtaining the reciprocal of the cost of living index (using 1929 as the base year) the purchasing power of the dollar at 1929 prices may be determined for any date. For example, Schedule 17 indicates that the cost of living index for the year 1933 was 74.9. The reciprocal of this index is 1/74.9, or 0.01335, which, translated into dollars and cents, becomes $1.335. This represents an increase of 33.5 per cent since 1929 in the purchasing power of the dollar in its command over the necessities of life for the average wage-earner's family.

To illustrate, let it be assumed that in 1929 four units of a given commodity could be purchased for $1.00, and that by 1933 the cost of living index had declined from 100 to 80, and the same four units could be purchased in 1933 for $0.80. It is clear that, at $0.20 per unit in 1933, it would be possible to purchase five units for $1.00 in that year, as against four units in 1929, so that the 1933 dollar would purchase 25 per cent more of that commodity than the 1929 dollar, or, in terms of 1929 prices the 1933 dollar was worth $1.25.

However, Schedule 17 indicates that for every $100 of national income received by individuals in the year 1929, only $57.30 was received in 1933. On the basis indicated above, each dollar of this reduced amount of income was worth 1.335 times as much as the 1929 dollar in its command over the necessities of life, so that $57.30 of 1933 cash income was equivalent to $76.50 of 1929 cash income. Therefore, although the index of national income payments declined from 100 in 1929 to 57.3 in 1933, the decline in real income was only from 100 to 76.5. In other words, the effects of the depression would have been much more severe for all concerned if the cost of living had remained at the 1929 level during the depression period.

It is of interest to note that the purchasing power of income payments received by individuals in 1937, on the

basis indicated, was practically the same as it was in 1929. In 1938 there was a decline both in cash income received by individuals and in its aggregate purchasing power, while in 1939 and continuing into 1940 there has been consistent improvement from the standpoint of both cash income and real income.

Comparative Risk.

In stating the basic principles to be considered in connection with the problem of rate of return it was indicated that the element of risk is a fundamental factor in the determination of a proper rate of return. For this reason an attempt has been made in this section to present data disclosing the relative risk of public utilities and other forms of enterprise as measured by stability of earnings.

Chart 12—Chart 12 reflects the trend of corporate earnings, that is, net earnings available for preferred and common stock, based on earnings indexes computed by Standard Statistics Company for 13 utilities, 117 industrials and all Class 1 Railroads.

From this chart it may be seen that the trend of utility earnings has not been subject to very sharp fluctuations as in the case of industrials and railroads. While the earnings indexes for the latter two groups dropped within less than four years from peaks of 140 and 120, respectively, in the latter part of 1929, down to below-zero levels indicating substantial deficits in 1933, the reduction in public utility earnings in the same period is indicated by a decline in the earnings index from 140 to 90 (base year 1926=100).

In all three corporate groups there was a decline in earnings commencing in the latter part of 1937, but the decline in public utility earnings was much less pronounced. It will be noted that an upward trend in net earnings was maintained by all three groups throughout the year 1939, with the result that 1939 earnings exceeded those for 1938. Actually, utility and railroad earnings for 1939 almost

equalled the 1937 calendar-year levels, but industrial earnings still remained approximately 30 per cent below the 1937 level.

On the basis of estimated earnings for the nine months ended September 1940, as published by Standard Statistics Company, the average level of earnings for the twelve months ended September 1940 were considerably above the level for the calendar year 1939. The indexes for the year ended in September, as shown in Schedule 18, are as follows:

Public Utilities—134.3; Industrials—102.2; Railroads—26.5. It will be noted that industrial earnings, at 102.2, were slightly below the 1937 level of 106.1, while utility and railroad earnings for the year ended September 1940 were at a somewhat higher level than in 1937.

It is of interest to note the average earnings indexes for the ten-year period 1930-1939 of the three groups of companies, which are as follows: Public Utility—110.5; Industrials—56.1; Railroads—10.0. In each instance the earnings index is compared with 1926 calendar-year earnings as equal to 100.

The detailed figures supporting Chart 12 are contained in Schedule 18. The names of the thirteen utilities whose earnings form the basis of the public utility earnings index, together with the principal utility service performed by each company or system as measured by the proportion of total operating revenues derived therefrom, are listed on Page 7 of Schedule 18.

An independent compilation of net earnings available for preferred and common stock, as reported by the five predominantly electric utility companies or systems listed on Page 7 of Schedule 18, discloses that the earnings index for those five companies or systems was for the most part on a considerably higher level throughout the period 1925-1939 than the index for the entire group of thirteen utilities, as may be seen from the following comparison:

Year	Earnings Index 13 Utilities	5 Electric Utilities
1925	87.3	84.5
1926	100.0	100.0
1927	106.9	107.2
1928	124.0	136.3
1929	142.6	164.0
1930	127.7	163.8
1931	123.6	154.3
1932	96.9	120.6
1933	97.8	100.5
1934	88.7	95.7
1935	93.1	107.1
1936	121.0	114.9
1937	125.8	132.8
1938	107.1	116.5
1939	123.1	137.4

Chart 13—Chart 13 shows the relationship of net profit to total invested capital for leading American industrial, utility and railroad corporations, based upon studies and publications of the Standard Statistics Company, and covers the thirteen-year period 1927-1939. Two methods of computing invested capital may be used. By one of these methods invested capital is considered as representing outstanding securities plus surplus and capital reserves. This method is the basis of the data reflected in Chart 13. Net profit, as defined in the computations used for this chart, represents the amount available for fixed charges after depreciation, and so forth. Accordingly, comparable earnings figures are obtained regardless of differences in capital structure.

It may be pointed out, in connection with Chart 13, that not only are utility earnings more stable than earnings of industrials and railroads but for the ten-year period 1930-1939 the average per cent of utility net profit (as defined) to total invested capital was approximately equal to the industrial average and, of course, considerably higher than the railroad average.

The averages for the ten-year period are as follows: Public Utilities—5.57 per cent; Industrials—5.59 per cent; Railroads—3.17 per cent.

Page 3 of Schedule 19 contains a list of the 21 leading utility corporations for which the relationship of net profit to invested capital is expressed in Chart 13. For each utility corporation or system in the list is shown the principal utility service rendered, together with the per cent of total operating revenues derived from such service. It will be noted that 13 of the 21 utility corporations or systems listed therein are predominantly electric utilities.

Chart 14—Chart 14 portrays a similar relationship to that shown in Chart 13. However, in the data supporting Chart 14, which are contained in Schedule 20, invested capital is represented as the sum of property accounts (less reserves for depreciation) and inventories of materials and supplies. The resulting chart does not differ greatly from Chart 13 in the trends shown for the different types of companies, although the percentage levels differ somewhat.

In this instance, also, an independent compilation was made of underlying data for the 13 predominantly electric utility companies or systems (see Page 3 of Schedule 19) included in the group of 21 leading utility corporations. A comparison of the results of such compilation with the per cent of net profit to property accounts and inventories for the group of 21 leading utility corporations as shown on Page 1 of Schedule 20 is presented on the following page.

	% Net Profit	
	21 Utilities	13 Electric Utilities
1927	7.3%	7.3%
1928	7.5	7.2
1929	7.6	7.4
1930	7.3	7.3
1931	6.9	6.8
1932	6.1	6.2
1933	5.8	5.8
1934	5.7	5.8

	% Net Profit	
	21 Utilities	13 Electric Utilities
1935	6.1	6.0
1936	6.4	6.3
1937	6.2	5.9
1938	5.9	5.8
1939	6.2	6.2

From the foregoing comparison, it would appear that the results shown in Chart 14 with respect to the group of 21 leading utility corporations are heavily weighted by the earnings experience of electric utilities during the thirteen-year period 1927-1939.

Local Conditions.

This section is presented to afford a *persepective* of conditions in the general area of ultimate consumption of natural gas supplied through the pipe line facilities of the companies included in the present proceedings.

Chart 15—Chart 15 shows the comparative rediscount rates of the New York and Chicago Federal Reserve Banks and indicates that these rates are at the lowest point since 1920, namely, 1 per cent and 1.5 per cent, respectively. No change in rate has been effected by either bank since August 1937 as indicated in Schedule 21 which shows all changes in the rediscount rates effected by both Federal Reserve Banks since 1918.

Schedule 21-A—This schedule contains the year-end rediscount rates of the twelve Federal Reserve Banks for the years 1929 to 1939, inclusive. It will be observed that in 1937 the rediscount rate of each of the twelve banks except the Cleveland Federal Reserve Bank was reduced by one-half per cent. The rate then established was 1.50 per cent for all banks except the Federal Reserve Bank of New York which reduced its rate from 1.50 per cent to 1.00 per cent. There has been no change in rate since 1937 by any of the twelve banks with the exception of the Federal Reserve Bank of Boston which reduced its rate from 1.50 per cent to 1.00 per cent in 1939.

Chart 16—Chart 16 compares averages of rates on commercial loans charged customers by banks in principal cities of the country and shows separately the rates for banks in New York, banks in seven northern and eastern cities exclusive of New York City, and banks of eleven southern and western cities.

As indicated in Schedule 22 supporting the chart, the figures relate to rates charged by reporting banks to their own customers as distinguished from open market rates. The averages are based on rates reported for all new commercial and industrial loans with maturity of 30 days to 12 months, except paper purchased in the open market and loans secured by real estate, but including business loans secured by stocks and bonds as well as business loans otherwise secured and unsecured.

Loans to building and loan associations, insurance companies, credit unions, and similar organizations not engaged directly in financing the sale of consumers' or durable goods, loans to hospitals, educational institutions, and so forth, and personal or installment loans to individuals other than for business purposes are not included.

The cities included in the group of seven other northern and eastern cities and eleven southern and western cities are listed on Page 2 of Schedule 22. As indicated on Chart 16, the rates charged customers by New York City banks are considerably lower than those charged by the banks outside New York, while the rates of the seven other northern and eastern cities in turn are lower than the rates charged by the eleven southern and western cities. The comparative rates for the second quarter of 1940 are as follows: New York City—2.00 per cent; seven northern and eastern cities—2.49 per cent; eleven southern and western cities—3.38 per cent.

It will be noted that all rates drifted steadily lower from 1933 through 1936, after which time a certain degree of stability is noted until the early part of 1939. By 1935 rates on commercial loans in New York City had fallen to about present levels, but in other leading cities they continued to decline through 1935 and 1936.

In this connection it should be noted that the current quarterly averages are not strictly comparable with the monthly averages shown for the period 1928-1938. The two series differ in that the monthly series was based on reports of prevailing rates, whereas for the present quarterly series each bank reports the numbers and amounts of loans made at specified rates and within various rate changes. On the new basis, rates are at a higher level for New York City by approximately one-half per cent.

Rates currently are based on reports made four times a year covering data on new loans for the first half of March, June, September, and December. Between September 1938 and September 1939 rates first increased and then declined, but it is reported that this movement was largely due to seasonal influences. Because of methods of reporting, seasonal influences did not appreciably affect the rates that were formerly reported by banks.

It will be observed that the rates charged customers by New York City banks and banks in the seven other northern and eastern cities, which include the City of Chicago, reflected a decline in the last quarter of 1939 which was followed by a rise in the first quarter and a decline in the second quarter of 1940. On the other hand, rates charged by banks in the eleven southern and western cities reflected no substantial change in the last quarter of 1939 but exhibited slight increases in the first two quarters of 1940.

Schedule 23—This schedule contains comparative indexes of department store sales for the United States as a whole and for the Federal Reserve District of Kansas City. This district embraces all of the states of Colorado, Wyoming, Nebraska, Kansas, substantial portions of New Mexico and Oklahoma and a narrow strip along the western boundary of Missouri. Schedule 23 indicates that during the period since 1924 the level of department store sales in this region has compared favorably with that for the nation and in recent years has shown a tendency to fluctuate at almost the same level as that for the nation.

Schedule 24—This schedule is presented for the purpose of comparing the relative changes in the level of in-

come payments for the United States and the state of Colorado for the period since 1929. An index (1929=100) has been computed from dollar amounts obtained directly from the National Income Section of the U. S. Department of Commerce. The United States totals have recently been revised by the Department of Commerce for all years.

However, the revised amounts shown in this schedule are not substantially different from the previously published figures contained in Schedule 16, nor do the index figures for the United States vary to an important extent from those appearing in Schedule 17.

It will be noted that national income payments for the state of Colorado amounted to $613,000,000 in 1929, declined to $374,000,000 in 1933, rose to $608,000,000 in 1937, or 99.2 per cent of the 1929 total, fell off to $554,000,000 in 1938 and advanced to $581,000,000 in 1939.

Income payments for the state of Colorado had fallen by 1933 to 61 per cent of the 1929 total, whereas for the nation the corresponding figure was lower at 57 per cent in 1933. Comparison of the figures for the United States and state of Colorado for individual years reveals that while fluctuations followed the same general pattern in both instances, the index level of income payments for the state of Colorado has been consistently higher than that for the nation and in 1939 was 94.8 for Colorado as compared with 85.1 for the country as a whole.

Schedule 25—This schedule presents comparative statistics on estimated cash farm income, value of manufactured products added by manufacture, and value of all minerals produced for the United States and the state of Colorado.

In the upper section of the schedule the data are reported in millions of dollars, while in the lower section the dollar amounts have been reduced to an index based on the year 1929 as equal to 100. Figures are not available for all years in all classifications. Inspection of the data reveals that the level of estimated cash farm income from livestock and crops (including Government payments beginning in 1933) was somewhat lower for the state of Colorado than for the nation.

With respect to value added by manufacture in the state's manufacturing industries, it appears that the levels in the biennial census years for the state of Colorado have been approximately equal to those for the nation since 1929. However, the value of minerals produced in Colorado has been relatively higher since 1929 than for the country as a whole.

From 1934 to 1937 the index of value of minerals produced became increasingly higher for Colorado than for the nation to the extent that in 1937 when the United States index reached its highest level of 90.5 since 1929, the corresponding index for the state of Colorado stood at 121.7.

Idle Money Factors.

The data in this section are presented for the purpose of showing the present situation with respect to the volume of idle investment funds and the factors contributing to the growth of such funds in recent years.

Schedule 26—This schedule reflects the total amount of funds carried by member banks of the Federal Reserve system in their reserve balances with the twelve Federal Reserve Banks, together with the portion thereof representing "required" reserves and "excess" reserves, as of the close of each year commencing with 1923.

Required reserves are funds which member banks are required by law to keep on deposit with the Federal Reserve Banks as reserves against deposits made with the member banks by their own customers. Member banks may carry balances with the Federal Reserve Banks in excess of their required reserves, such excess balances consituting what are known as excess reserves.

Changes in reserve requirements since June 21, 1917 are shown on Page 2 of Schedule 26. Reserve requirements on demand deposits of member banks vary according to classes of banks. Member banks are classified into three groups: central reserve city banks, reserve city banks, and country banks. Central reserve city banks are member banks located in New York City and Chicago, reserve city banks are member banks in sixty other cities of lesser size, and

country banks are member banks located elsewhere. It will be noted that reserve requirements on time deposits are uiform for all member banks, while there are important variations among classes of banks in required reserves based on demand deposits.

It will be noted that in the early years of the period the total reserve balances were not subject to marked fluctuation and excess reserve balances were comparatively small in relation to total reserves, some years in fact reflecting deficiencies in required reserves. This was the situation prevailing generally prior to 1931. In that year total reserves reached their lowest level following 1923 at 1,961 millions of dollars. In the following two years the reserves increased to 2,729 millions, but the increases in total reserves were reflected by increases in excess reserves which, at the end of 1933, were higher than those shown for any previous year.

From 1933 to 1935 total reserves more than doubled and excess reserves increased by approximately two billion dollars. Reserve balances continued to increase in 1936 but due to an increase in reserve requirements in August of that year excess reserves decreased 860 millions despite an increase of approximately a billion dollars in total reserves. The increases in reserve requirements in March and May 1937 effected a still further reduction of 772 millions in excess reserves, although total reserves increased about 400 millions in that year.

In April 1938 reserve requirements were reduced to approximately those established in March 1937 and thereafter, with no changes in reserve requirements, total reserves continued to increase to a level in excess of 13½ billion dollars in 1940. Required reserves have increased from 5,815 to 7,058 millions since 1937, but excess reserves have increased by 5,400 millions to an unprecedented total of over 6½ billion dollars, the figure at September 25, 1940 being 6,645 millions.

Schedule 27—The purpose of this schedule is to set out the factors which supply member bank reserve funds and those which use such funds in such manner as to show the various changes which have accounted for the rise in mem-

ber bank reserve balances in the Federal Reserve Banks between June 1929 and September 1940.

The schedule shows that the factors supplying funds for the building up of member bank reserve balances are increases in outstanding Federal Reserve Bank credit, increases in the monetary gold stock, and increases in U. S. Treasury currency outstanding. Decreases in these items operate to decrease member bank reserve balances. Federal Reserve Bank credit consists of bills discounted for or advances made to member banks, bills bought in the open market, holdings of U. S. Government securities, and other items such as industrial advances made under Section 13b of the Federal Reserve Act.

On the other hand, the factors using or drawing upon member bank reserve balances are increases in currency in circulation, in U. S. Treasury cash holdings, in U. S. Treasury deposits with Federal Reserve Banks in non-member bank deposits with Federal Reserve Banks and in other Federal Reserve accounts. Decreases in these items operate to increase member bank reserve balances. The item "other Federal Reserve accounts" consist of the sum of paid-in capital, surplus, other capital accounts, and all other liabilities (excluding deposits and Federal Reserve notes in circulation), less bank premises and all other assets (excluding gold certificates, cash, and so forth, on hand and holdings of bills discounted, U. S. Government securities, and so forth).

Inspection of Schedule 27 will show that the net effect of changes in these factors between June 1929 and September 1940 has been an increase of 11,347 million dollars in member bank reserve balances with the Federal Reserve Banks. With respect to such increase in member bank reserve balances, it is shown that required reserves increased by 4,725 million dollars and excess reserves increased by 6,622 million dollars.

It is apparent from inspection of Schedule 27 that the most important factor contributing to the increase in member bank reserve balances has been the increase in the monetary gold stock. From approximately 4 billion dollars in June 1929 the gold stock had increased to 21 billion dollars

in September 1940, a growth of over 17 billion dollars during the eleven-year period.

Analysis of the growth in the gold stock reveals that approximately 13 billion dollars of the increase has originated since 1934. Data available through September 1940, up to which time the increase in the gold stock since 1934 amounted to approximately 13 billion dollars, indicate that about half of this increase was accounted for by the net movement of capital to this country from foreign countries, not including over 4 billion dollars of gold imports arising from unaccounted-for transactions. The remainder of the increase was accounted for principally by favorable balances of trade and services with foreign countries and domestic gold production, which were offset to some extent by net imports of silver.

Schedule 28—This schedule shows comparative figures for all years since 1923 on total deposits and total loans and investments of all banks in the United States as contained in annual and monthly publications of the Board of Governors of the Federal Reserve System. Data are shown separately for non-member banks and member banks of the Federal Reserve System.

The data on deposits reflect an increase of approximately seven billion dollars in total deposits, exclusive of interbank deposits, from June 1929 to June 1940, whereas the comparable figures on loans and investments indicate a decrease during the same interval of about seven billion dollars. The comparison reflects a net increase in uninvested funds during the eleven-year period of around fourteen billion dollars for all banks in the United States.

For member banks of the Federal Reserve System the increase in deposits during the eleven-year period was about ten billion dollars and the decrease in loans and investments amounted to approximately one billion, dollars, indicating a net increase of around eleven billion dollars in uninvested funds of member banks during the period. This amount is seen to correspond closely with the increase in member bank reserve balances between June 1929 and September 1940 shown in Schedule 27. (A comparison with June 1940 mem-

ber bank reserve balances would give substantially the same result inasmuch as the June reserve balances did not exceed the September balances by more than twenty million dollars.)

Because of reserve requirements imposed upon member banks by law, it is evident from Schedule 27 that they are restricted in the use of reserve balances for expansion of loans and investments to that portion thereof representing excess or idle reserves. These excess reserves, as above stated, amounted to 6,645 million dollars at September 25, 1940. By reference to Page 2 of Schedule 26, however, it is apparent that loans and investments could be expanded several times the amount of current excess reserves before the latter would be absorbed into required reserves under operation of current reserve requirements. This possibility arises from the fact that expansion in loans and investments by the member banks considered as a whole would give rise to increased deposits, unless there are offsetting influences, whereas the banks would be required to maintain reserves against such increased deposits only to the extent of the required percentages shown in Schedule 26.

From the data presented in this section, it may be seen that opportunities for investment, because of the growth in the volume of idle funds, have been more limited in the past few years than formerly, particularly in view of the fact that since the beginning of 1934, as reflected in Schedule 9, more than two-thirds of all corporate financing in the United States has been for refunding purposes. This situation with respect to idle funds has been reflected in the declining level of interest rates during the period since 1934.

Rate of Return Study—Part II.

As previously stated, Part II of the rate of return study contains some general statistics of the natural gas industry and presents certain facts with respect to the ownership, issuance, prices and yields of securities of natural gas pipeline companies. The statistical data are contained in Schedule 1 to 4, inclusive, and Charts 1 to 3, inclusive, as listed in the Table of Contents. The data pertaining to securities of natural gas pipe-line companies are contained in Schedule 5, together with its underlying Schedules 5-A, 5-B, 5-C, 5-D,

5-E, 5-F, and 5-G, and in Schedule 6. Chart 4 and Schedule 7 contains information respecting the corporate affiliations of the companies involved in the present proceedings, and recent financing by companies affiliated therewith.

Operating And Financial Statistics
Of The Natural Gas Industry

Schedule 1

Revenues from Sales to Customers. Schedule 1 portrays the growth of the distributing end of the natural gas industry. It shows revenues, volume of gas sales, and number of customers by years from 1929 to 1939, both inclusive, as taken from Statistical Bulletin No. 41, October, 1940, published by the American Gas Association under the title "Annual Statistics of the Natnral Gas Industry in 1939." The data on revenues, gas sales and customers are set forth under separate captions in the upper, middle, and lower portions of the schedule.

As indicated in the footnote, the figures do not include natural gas used in field operations and in the manufacture of carbon black or gas used by distributing companies in the conduct of their own operations. Furthermore, the statistics do not include data for companies selling mixed manufactured and natural gas.

By referring to the upper section of the schedule, it will be seen that during the eleven-year period revenues increased from 376 million to 448 million dollars, or by approximately 19 per cent. With the general falling off of business in 1938, revenues declined some 28 million dollars below the 1937 level but in 1939 they increased approximately 33 million dollars and exceeded 1937 revenues by over 5 million dollars. Following 1929, revenues increased somewhat in 1930, fell off in 1931, 1932 and 1933 and recovered in 1934, each year thereafter except 1938 reflecting a substantial increase over the previous year. According to the latest report of the American Gas Association, revenues for the first seven months of 1940 have reflected a substantial increase over the revenues for the same period in 1939.

The classification of revenues shown in Schedule 1 reveals

that revenues derived from sales to domestic consumers, including natural gas sold for househeating purposes, constitute substantially more than half of the total revenues reported. In 1929 such revenues amounted to $223,000,000 and, while falling off to the extent of 5 percent at the low point of the depression, recovered rapidly and were $32,000,000 higher in 1939 than in 1929.

Commercial revenues showed steady improvement each year during the eleven-year period, except in 1933 and 1938, increasing from $32,000,000 in 1929 to over $50,000,000 in 1939, a gain of over fifty per cent.

Revenues from industrial sales, including natural gas used as fuel by electric utilities, amounted to $120,000,000 in 1929. During the depression years, revenues from this source declined to $75,000,000 in 1932, but recovered in 1933 and by 1937 were $26,000,000 higher than in 1929. In 1938 revenues from industrial and electric utility consumers amounted to $126,000,000 off $20,000,000 from 1937, but in 1939 recovered again to $142,000,000, which amount, however, was still $5,000,000 below the 1937 total. According to the latest report of the American Gas Association, the revenues for industrial and electric generation consumers for the first seven months of 1940 exceeded the revenues for the same period in 1939 by over $6,000,000.

Average Annual Revenue per M. C. F. of Gas Sales. The average annual revenue per M.C.F. of gas sold amounted to 38 cents in 1929, was 41.1 cents in 1932, 33.7 cents in 1937, 34.3 cents in 1938, and 33.8 cents in 1939, a net decrease of 4.2 cents since 1929.

The average revenue from domestic sales was 66.7 cents in 1929 and, after reaching 71.1 cents in 1932 and 1933, gradually declined to 68.6 cents in 1939, a net increase of 1.9 cents per M.C.F. since 1929.

The average revenue per M.C.F. of gas sold to commercial consumers has been following a steadily downward trend since 1929 and declined from 55.5 cents in 1929 to 46.1 cents in 1939, a net decrease of 9.4 cents per M.C.F. since 1929.

The average for industrial and electric utility sales has

declined from 20.1 cents per M.C.F. in 1929 to 16.9 cents in 1939, a decrease of 3.2 cents, the 1939 average being almost one cent higher than the average of 16.0 cents for 1934.

Gas Sales to Consumers (M.C.F.) Total gas sales reported for 1929 aggregated 991 million M.C.F. In 1932, sales reached a low point of 834 million M.C.F. for the eleven-year period. Subsequent years through 1937 witnessed steady improvement and the 1937 total was 1,314 million M.C.F., a decline of about 104 million M.C.F. taking place in 1938, but during 1939 the total again reached a new level of 1,328 million M.C.F. The bulk of the large increase of 337 million M.C.F. in volume of sales between 1929 and 1939 was brought about by increased sales to industrial and commercial consumers. Commercial consumption increased from 58 to 109 million M.C.F. during the period and industrial consumption increased from 597 to 846 million M.C.F., while domestic consumption increased from 335 million M.C.F. in 1929 to 373 million M.C.F. in 1939. About 85 percent of the increase in total gas sales in 1939 over 1938 was attributable to the increase in industrial consumption. Fluctuations in industrial consumption normally would tend to conform to changes in economic conditions. However, upon comparison with the fluctuations reflected in the Federal Reserve Board's index of industrial production, it was found that using an index with 1929 as the base year in each case, industrial consumption did not fall during the depression years to the lowest level reached by the index of gas sales to industrial and electric utility consumers has been at a substantially higher level than the index of industrial production. This situation would appear to be accounted for in a large part by the expansion in number of industrial customers since 1929, such expansion being indicated by the increase from 22,000 customers in 1929 to 43,000 in 1939.

Average Annual Gas Sales (M.C.F.) per Customer. Average annual sales in M.C.F. per customer are based on the number of customers at the end of each year.

Sales to domestic consumers declined during the period as a *whole*, the average M.C.F. per customer per year being 60.5 in 1929 and 54.3 in 1939. However, the low point was 51.3 in 1934 and there was slight increases in 1935, 1936 and

1937, as well as in 1939, although in the latter year the average was still slightly below the 1937 figure.

The average consumption per commercial customer was 175.6 M.C.F. per year in 1929, reaching a low point of 164.2 in 1931, increased to 179.5 in 1932, fell off to 170.4 in 1933 and increased thereafter in each year to 204.1 in 1937.

Average industrial sales in M.C.F. per customer per year, fluctuated more sharply as would be expected in a period of changing economic conditions such as business has experienced since 1929. The sales per customer were 27,135 M.C.F. in 1929, dropped to 17,440 in 1933 and recovered thereafter, reaching 21,294 in 1937. In 1938 the average consumption per customer declined to 18,044 M.C.F., but in 1939 increased to 19,673 M.C.F.

Number of Customers at End of Year. The data on number of customers at end of year shown in the lower portion of Schedule 1 reveals a substantial growth since 1929, the number of all customers increasing from 5,896,000 in that year to 7,454,000 in 1939, an increase of 1,558,000 customers. In only one year, 1932, is a decline in total number of customers shown although it will be noted that the number of customers did not vary between 1930 and 1931.

Domestic customers increased from 5,540,000 in 1929 to 6,870,000 in 1939 a gain of 24 percent in the eleven-year period. Except in 1931 and 1932 there was a substantial increase in domestic customers each year. The number of commercial customers reflected a marked growth during the period since 1929, the increase in this group being from 334,000 in 1929 to 541,000 in 1939, a gain of over 60 per cent. The number of industrial customers has almost doubled, increasing from 22,000 in 1929 to 43,000 in 1939.

Average Annual Revenue per Customer. The average revenue per domestic customer was $40.34 in 1929 and $37.24 in 1939. For commercial customers the average was $97.54 in 1929 and $93.09 in 1939. It will be noted that in 1939 average annual revenue for both domestic and commercial customers increased over that for 1938 but was somewhat lower than in 1937. Average revenues per industrial customer fluctuated considerably during the eleven-year period

and, while the number of customers almost doubled, the annual revenue per industrial customer dropped *fro* $5,463.95 in 1929 to $3,318.42 in 1939.

Schedule 2—Schedule 2 contains comparative estimated income statements for the years 1931 to 1939, inclusive, of the companies for which revenues, gas sales and customer data were presented in Schedule 1, and was taken from the same statistical bulletin of the American Gas Association.

It will be noted that the revenues from gas sales to consumers shown on the first line in Schedule 2 are in agreement with the revenue data shown in the upper portion of Schedule 1. Examination of Schedule 2 discloses that net operating income, designated as "Utility Operating Income" was $107,678,000 in 1939, or about $10,000,000 higher than that for 1938 although $4,000,000 lower than the 1937 figure of $111,811,000 which represented the peak for the nine-year period, and $2,000,000 lower than the 1936 total. The low point following 1931, for which year net operating income was reported at $84,601,000 was reached in 1933 at $65,188,000. In 1934 net operating income recovered to $71,382,000 and increased to $93,508,000 in 1935.

Net income available for dividends and surplus followed the same general trend, starting at $51,103,000 in 1931, declining to $26,940,000 in 1933, rising steadily to $74,989,000 in 1937, declining to $62,275,000 in 1938, and increasing to $72,152,000 in 1939. It will be noted that although net operating income in 1939 was lower than in 1936, net income available for dividends and surplus was higher in 1939 by $3,000,000, chiefly because of a decrease in interest and other deductions of almost $6,000,000.

Utility plant, which is reported only for the years 1934 to 1939, inclusive, increased from 1934 to 1938 by approximately $111,000,000. In 1939 utility plant was reported at $2,414,490,000, which was about $30,000,000 less than the amount reported for 1938.

Chart 1—This chart shows at the right monthly sales of natural gas and revenues there from by months during the years, 1929, 1937, 1938, 1939 and the first half of 1940. At the lower left are shown monthly revenues of the manufac-

tured gas industry and at the upper left combined revenues of the total gas industry during the same years, except for 1939 which in general coincided with 1938.

The revenues for the entire gas industry were generally higher in 1937 than in 1929 and 1938, but showed a substantial increase over 1937 during the first half of 1940, due generally to the increase in sales of natural gas. Revenues from the sale of manufactured gas show generally a decline since 1929. On the chart at the right, the lower group of curves shows that the revenues of the natural gas industry have increased generally since 1929 and are at a new high level in 1940.

The upper group of curves on the chart at the right shows that the business of natural gas companies is highly seasonal in character, as indicated by monthly fluctuations in the volume of gas sold. Volume of sales in recent years has been substantially greater than in 1929. In 1939 sales were greater in the first and last few months but smaller in the summer months than was the case in 1937, total sales for 1939, however, exceeding those of 1937 by about 13,000,000 M.C.F. Deliveries during most of the first six months of 1940 were greater in volume than in 1939, with sales in February at the greatest volume recorded for that month.

Chart 2—Chart 2 is presented in order to show the monthly trend of sales in 1940 as compared with 1939 both in total and by classes of revenue, that is, domestic, commercial and industrial. The chart shows that total monthly revenues in 1940 through the month of June were substantially higher than in 1939, with the largest consistent gain being in domestic revenues, although industrial and commercial revenues, particularly in the first few months of 1940, also reflected a substantial increase over 1939. The February peak in revenues will be seen to have been accounted for by peaks in domestic and commercial revenues recorded in that month.

Chart 3—Chart 3 is a photostatic copy of a chart taken from the American Gas Association's Statistical Bulletin No. 41 of October 1940. The chart compares the American Gas Association's index of total natural gas consumption

by domestic and commercial consumers, with its index of manufactured gas consumption by all classes of consumers, and with the Standard Statistics index of industrial activity, all indexes being based on the year 1926 as equal to 100.

The reason for omitting industrial sales in constructing the index of natural gas sales while including them in the index of manufactured gas sales is easily found by comparison of the relationship of industrial sales to total sales. In the case of manufactured gas, industrial sales for the twelve months ended December 1939, as reported in the American Gas Association's Monthly Summary of Gas Company Statistics for that month, amounted to approximately 58.5 million Mcf., or roughly 16 per cent of total manufactured gas sales. However, sales of natural gas for industrial use in the same period, including sales for electric generation purposes, amounted to approximately 846 million Mcf., or 64 per cent of total natural gas sales.

The chart shows that manufactured gas sales rose to 116 per cent of the 1926 level in 1930, fell to somewhat less than the 1926 level in 1933, increased steadily thereafter through 1939, the index reaching about 120 in that year. Sales of natural gas, however, on the basis indicated, have increased to a substantially greater extent since 1926 than manufactured gas sales.

The index of natural gas sales rose to 130 by 1929, dropped to 118 in 1933, which was still far above the 1926 level, advanced to about 146 by 1937, and fell off to a moderate extent in 1938, but reached a new peak in 1939. Thus in 1939 the volume of natural gas sales was approximately 54 per cent greater than in 1926, while manufactured gas sales were only about 20 per cent greater.

It will be seen by comparison with the Standard Statistics index of industrial activity that although both the natural and manufactured gas industries experienced a decline in volume of gas sold during the depression years, the volume did not decline below the 1926 level, except to a slight extent in the case of manufactured gas, in contrast with the experience of industry in general, for which a decline in activity of about 45 per cent from the 1926 level was recorded at the lowest depth of the depression.

Schedule 3—Schedule 3 shows the total amount of natural gas production and consumption in the United States for the years 1926 to 1939, inclusive, and the amount transported in interstate commerce for the years 1926 to 1938, inclusive. From 1926 to 1939, natural gas production increased from 1,313 million to 2,435 million Mcf. Consumption, excluding gas used for field operations and manufacture of carbon black, increased from 704 million to 1,436 million Mcf. in the same period.

Natural gas transported in interstate commerce increased from 209 million Mcf. in 1929 to 636 million Mcf. in 1938. In other words, since 1926 production has increased 85 per cent, and consumption other than for field use and carbon black manufacture has more than doubled. These increases were accompanied by an increase of over 200 per cent in the quantity of natural gas transported in interstate commerce up to 1938 and, as will be seen from column (e) of the schedule, the proportion of the total quantity of natural gas consumed which is transported in interstate commerce has also been steadily increasing. Thus in 1938 this proportion was about 48 per cent of total consumption, whereas in 1926 the proportion was approximately 30 per cent, indicating the increased importance of natural gas as a commodity in interstate commerce.

Schedule 4—Schedule 4 is presented for the purpose of showing data on the interstate movement of natural gas into the states of Colorado and Wyoming, as taken from publications of the U. S. Bureau of Mines. The schedule shows that since 1929 Texas has been the largest source of natural gas transported into Colorado from other states.

The quantity of gas transported from Texas into Colorado is shown in Schedule 4 to have increased from 12,563,000 Mcf. in 1929, the first full year of operation of the Denver line, to 20,511,000 Mcf. in 1937, and to have declined to 18,210,000 Mcf. in 1938. The records of the Federal Power Commission indicate that all gas moving into Colorado from Texas is transported through the pipe lines of the Canadian River Gas Company and Colorado Interstate Gas Company, two of the three companies involved in the present proceedings.

With respect to natural gas transported into the state of Wyoming from other states, Schedule 4 shows that since 1931, the largest portion thereof has consisted of gas transported from Texas. In 1929 and 1930, the only interstate movement of gas into Wyoming was reported as gas transported from Colorado. The Commission's records disclose that the only movement of natural gas into Wyoming from Texas is transported through the facilities of the two above-named companies and those of the Colorado-Wyoming Gas Company, the third company involved in the present proceeding. The latter company formerly transported gas into Wyoming from the Wellington, Colorado, fields, but when that field began to show signs of depletion, the company's pipe line system was extended south and connected with the system of Colorado Interstate Gas Company in 1931.

Ownership, Issuance, Prices and Yields of Securities of Natural Gas Pipe Line Companies

Schedule 5—Schedule 5 contains summarized data with respect to the security issues of 25 natural gas pipe line companies.

In preparing this list an attempt was made to include all natural gas companies which had the folowing characteristics:

(1) Companies engaged in the production and transmission of natural gas and sales thereof at wholesale and to main line industrial customers.

(2) Companies engaged in the transmission of natural gas and sales thereof at wholesale and to main line industrial customers.

(3) Companies so engaged which had operating revenues of $2,500,000 or more.

The purpose in selecting companies conducting operations of the type mentioned with revenues of $2,500,000 or more was to obtain a group of companies exhibiting generally the characteristics shown by the companies involved in the present proceedings.

Schedule 5 sets forth for each of the 25 companies having the characteristics just mentioned the total amount of securities outstanding and a breakdown of the total for each company according to classes of securities, i. e., bonds, debentures, notes, preferred stock, and common stock. Also shown for each company and each class of security, based on the most recent information available, are the amounts of securities held by the public, by institutions, and by affiliates. Institutional holdings include securities held by banks, insurance companies, universities, and so forth.

In this connection, it should be pointed out that Schedules 5-A to 5-G, inclusive, contain details supplementing or supporting the data contained in Schedule 5. For example, Schedule 5-A contains certain information with respect to the bonds, debentures and notes of the companies listed in Schedule 5 which are held by the public. Schedule 5-B gives details regarding the identity of institutional holders of bonds, debentures, and notes of the companies and the amounts of individual holdings. Schedule 5-C lists the holdings of bonds, debentures and notes by affiliates. Schedule 5-D shows certain information with respect to preferred stock of the companies held by the public, and Schedule 5-E sets forth the holdings of preferred stock by affiliated interests. Schedule 5-F contains data on market prices, earnings per share, dividends, and so forth, on common stock of the companies held by the public. Lastly, common stock holdings by affiliates of the companies are listed in Schedule 5-G.

The summary at Page 5 of Schedule 5 discloses that 25 natural gas pipe line companies listed therein had securities outstanding as of the latest date for which information is available in the aggregate amount of $657,399,135. These outstanding securities consisted of bonds, debentures and notes in the amount of $328,447,620, or 50.0 per cent of the total, preferred stocks in the amount of $25,131,000 or 3.8 per cent, and common stocks in the amount of $303,820,515, or 46.2 per cent. The respective amounts of bonds, debentures and notes outstanding, together with the relationship

of each to the total amount of all securities outstanding, were as follows:

	Amount	Per Cent of All Securities Outstanding
First mortgage bonds	$188,038,523	28.6%
Debentures	39,350,000	6.0
Notes	101,014,097	15.4
Total	$328,447,620	50.0%

Of the total amount of bonds, debentures and notes outstanding, affiliated interests held $182,408,097, or 55.5 per cent, institutional holdings totalled $126,628,000, or 38.6 per cent, and holdings by the general public amounted to $19,411,523, or 5.9 per cent. Of the total of $25,131,000 of preferred stocks outstanding, holdings by affiliated interests amounted to $23,639,200, or 94.1 per cent, and the remainder, or 5.9 per cent, was held by the public. Of the common stock outstanding, amounting to $303,820,515, the public held $10,394,418, or only 3.4 per cent, and affiliated interests owned the remainder.

Applying similar calculations to the total of all outstanding securities of the 25 companies listed in Schedule 5, it is found that the proportion held by the general public was 4.7 per cent and that held by institutional investors was 19.3 per cent, while the proportion held by affiliated interests constitutes 76.0 per cent of the total.

The foregoing calculations clearly indicate the predominant position held by affiliated interests with respect to the ownership of outstanding securities of natural gas pipe line companies. To summarize, affiliated interests owned 55.5 per cent of the bonds, debentures and notes, 94.1 per cent of the preferred stocks, and 96.6 per cent of the common stocks of the 25 companies listed in Schedule 5. On the other hand, only 5.9 per cent of bonds, debentures and notes, 5.9 per cent of preferred stocks, and 3.4 per cent of common stocks of the 25 companies were held by the general public.

With respect to each of the companies listed in Schedule 5, except Canadian River Gas Company and Colorado Interstate Gas Company for which it is believed an adequate description will appear in the record of the present proceedings, a brief statement is presented in the following paragraphs describing the nature and location of operations, source of supply, and other pertinent data. Although some of the information presented below is given as of the end of 1938, it is believed that it will suffice as a general description of the companies' operations.

The Arkansas Louisiana Gas Company is engaged in the production, transmission and distribution of natural gas. Its sources of supply are the Monroe, Richland and Elm Grove fields in Louisiana and certain other fields in Texas and Arkansas. The company supplies natural gas to a large number of communities in Arkansas, Louisiana, and Texas. The principal communities served at retail are Little Rock, Arkansas; Shreveport, Louisiana; and Texarkana, Texas. Gas is sold at wholesale, among others, to Consumers Gas Company for distribution in the city of Hot Springs, Arkansas, and to other companies for distribution in two smaller communities in Arkansas.

The company has 1,371 miles of transmission lines and has 10 compressor stations with an aggregate rated capacity of 26,390 h.p. The First Mortgage, 2¾ per cent, 1940-1944 bonds in the amount of $3,300,000 were held, it is indicated on Page 1 of Schedule 5, by institutions.

Referring to Page 1 of Schedule 5-B, it will be seen that the $3,300,000 First Mortgage bonds above mentioned are held by the Guaranty Trust Company of New York and by the Central Hanover Bank & Trust Company, the former owning $2,800,000 of the bonds and the latter, $500,000 thereof. The first mortgage, 3½ per cent, 1945-1954 bonds in the amount of $9,700,000 were also owned by institutions, as is indicated in Schedule 5, and Schedule 5-B shows that the entire issue was owned by the following institutions in the amounts indicated:

Equitable Life Assurance Society of U. S.	$4,850,000
Metropolitan Life Insurance Company	3,550,000
Massachusetts Mutual Life Insurance Company	400,000
Sun Life Assurance Co. of Canada	350,000
Teachers Ins. & Annuity Association of America	300,000
Provident Mutual Insurance Co. of Philadelphia	250,000
	$9,700,000

The $6,500,000 of Debentures shown in Schedule 5 were all held by the Arkansas Natural Gas Corporation as is shown on Page 1 of Schedule 5-C. Common stock of the company outstanding consisted of 298,988 shares of an aggregate par value of $14,949,400. All of the common stock was held by affiliates and Schedule 5-G indicates that the entire issue in question was owned by the Arkansas Natural Gas Corporation, a subsidiary of the Cities Service system.

Chicago District Pipeline Company. This company is engaged in the purchase, transmission and sale of natural gas. Its gas transmission system consists of approximately 43 miles of 24-inch pipe line from Joliet, Illinois, to a point of connection with a transmission main of the Peoples Gas Light & Coke Company on the southern limits of the city of Chicago; approximately 1.3 miles of 20-inch pipe line from the company's 24-inch system to a point on the Illinois-Indiana State line; approximately 31 miles of 24-inch pipe line and 4 miles of 20-inch pipe line forming a connection with a transmission main of the Peoples Gas Light & Coke Company on the western limits of the city of Chicago. The Chicago District Pipeline Company purchases its gas requirements from the Natural Gas Pipeline Company of America. The largest sales by the Chicago District Pipeline Company are to the Peoples Gas Light & Coke Company. The notes payable of the company in the amount of $2,769,897 were owned by the Natural Gas Investment Company, as shown in Schedule 5-C. The common stock, consisting of 7,500 shares of no par value, with book amount of $659,000, was all held by the Natural Gas Investment Company, as indicated in Schedule 5-G.

Cities Service Gas Company. This company is engaged in the production and transmission of natural gas. It ob-

tains its gas from a number of fields in Texas, Oklahoma, and Kansas, including particularly, the Panhandle field in Texas and the Oklahoma City and Seminole fields in Oklahoma. The company's system consists of 4,273 miles of pipe lines and 29 compressor stations. Gas is sold at wholesale to distributing companies serving 229 communities, including Kansas City, St. Joseph, Springfield, and Independence, Missouri; Bartlesville, Oklahoma; and Kansas City, Leavenworth, Topeka and Wichita, Kansas.

The company has outstanding First Mortgage 3¼ per cent and 3¾ per cent bonds due 1940-1954 in the amount of $35,000,000, all of which bonds are held by institutions. The 3¾ per cent bonds, aggregating $20,000,000, were owned outright by two insurance companies, as indicated on Page 1 of Schedule 5-B, and the remaining $15,000,000, 3¼ per cent bonds were held as collateral for loans, as noted on Page 1 of Schedule 5.

The $8,000,000 Debentures, 5½ per cent, 1956, were held by the Cities Service Company and subsidiaries, as shown in Schedule 5-C. The common stock of the company consisting of 350,000 shares of no par value was all held by the Empire Gas & Fuel Company, a Cities Service subsidiary, as shown in Schedule 5-G.

The El Paso Natural Gas Company is an operating and holding company. It purchases gas from producers in southeastern New Mexico. The company and its subsidiaries are engaged in the business of purchasing natural gas from producers in New Mexico, transmitting it through a pipe line system and selling it at wholesale to public utility and industrial customers located principally in or near El Paso, Texas; Hurley, New Mexico; Phoenix, Arizona; and Cananea, Mexico. The pipe lines of the company and its subsidiaries consist of 1,331 miles including duplicate lines, branch lines, and gathering lines. The First Mortgage, 3½ per cent bonds of the company in the amount of $6,000,000 and its First Mortgage, 3 per cent bonds in the amount of $3,000,000, were held by the following institutions, as is shown on Page 2 of Schedule 5-B:

Sun Life Assurance Co. of Canada	$ 900,000)
Equitable Life Asurance Society of U. S.	2,500,000)
Massachusetts Mutual Life Insurance Company	275,000)*
Metropolitan Life Insurance Company	2,000,000)
Mutual Life Insurance Co. of New York	475,000)
Harvard College	100,000
Total, First Mortgage, 3½% bonds	$6,000,000

All of the preferred stock of the company, consisting of 7 per cent cumulative preferred stock of a par value of $100 per share, was owned by the public, and the common stock of the company was likewise held by the public.

The Hope Natural Gas Company is engaged in the production, purchase, transmission and distribution of natural gas. It is one of the oldest and most important gas subsidiaries of the Standard Oil Company (New Jersey) in the Appalachian field. The company's operations are confined to the State of West Virginia, but its main outlets are sales to the East Ohio Gas Company which operates in the State of Ohio, and to the Peoples Natural Gas Company which operates in the state of Pennsylvania, both of which companies are likewise subsidiaries of the Standard Oil Company (New Jersey). The only security outstanding of the Hope Natural Gas Company was common stock, all of which was owned by the Standard Oil Company (New Jersey).

The Houston Gulf Gas Company is engaged in the production, purchase, transmission and wholesale distribution of natural gas. The principal producing properties of the company are located in South Texas. The main pipe lines extend from the field in South Texas to Houston, Texas, and industrial areas in that vicinity. Pipe lines of the company aggregate 482 miles.

The company sells at wholesale substantially all requirements of about 18 communities in southern Texas. The company is also engaged in the production, transportation and sale of a limited amount of crude oil. The bonds and debentures of the company, as shown in Schedule 5, were

*The First Mortgage, 3 per cent bonds, were held by these five insurance companies, the amounts held by each not being reported.

largely held by the public. The company's outstanding notes were held by an affiliate, United Gas Pipeline Company, as shown in Schedule 5-C. The preferred stocks were largely held by an affiliate, United Gas Pipeline Company, as indicated in Schedule 5-E. Most of the common stock of the company was also held by the United Gas Pipeline Company, a subsidiary of United Gas Corporation, as shown in Schedule 5-G.

The next company is Interstate Natural Gas Company, Inc., whose securities outstanding consisted of common stock, some of which was held by the public but the major portion of which, however, was held by Standard Oil Company (New Jersey) and the Columbian Carbon Company, as indicated in Schedule 5-G. The Interstate Natural Gas Company, Inc., owns 170 miles of main pipe line, 22 inches in diameter, running from the Monroe Gas Field in Northern Louisiana to Baton Rouge, Louisiana. It serves at wholesale companies supplying natural gas to Natchez and Baton Rouge, and it connects at Baton Rouge with a pipe line of the United Gas Pipeline Company, which supplies gas for resale in the city of New Orleans.

The Lone Star Gas Company is engaged in the production, transmission and distribution of natural gas and also, to some extent, in the production of crude oil. Its transmission lines are in two service groups. A main group extends from the southeastern extremity of the Texas Panhandle to Fort Worth and Dallas, where it connects with transmission and distribution lines which extend through the central part of Texas and southern Oklahoma.

The company distributes gas directly in Fort Worth. The secondary group extends in a southwesterly direction from Brownwood, Texas, to San Angelo, Texas. The company owns 4,384 miles of mains and field lines and 21 compressor stations. The company had outstanding notes in the amount of $16,600,000 which were held by the Lone Star Gas Corporation, parent company, as shown in Schedule 5-C. All of the company's outstanding common stock was held by the same holding company, as indicated in Schedule 5-G.

The Kentucky-West Virginia Gas Company is engaged in

the production, transmission and sale of natural gas. The company owns and operates natural gas properties and 518 miles of pipe line in the states of Kentucky and West Virginia.

Practically the entire output is furnished to the Louisville Gas & Electric Company and the Philadelphia Company and subsidiaries. As shown in Schedule 5-E all of the 5 per cent cumulative first preferred stock of this company was held by Louisville Gas & Electric Company, and all of the 7 per cent cumulative second preferred was held by the Philadelphia Company and subsidiaries. The company's common stock was owned by the Louisville Gas & Electric Company (40 per cent) and the Philadelphia Company (60 per cent), as indicated in Schedule 5-G.

The Memphis Natural Gas Company is engaged in the purchase and transmission of natural gas. The company's main pipe line extends from the Monroe field in Louisiana to Memphis, Tennessee, a distance of 402 miles. All of the notes of the company were held by institutions and somewhat more than half of the common stock of the company was held by the public while the remainder was held by Commonwealth Gas Corporation.

The Mississippi River Fuel Corporation is engaged in the transmission of natural gas. The company owns and operates 450 miles of main pipe line from Louisiana to St. Louis, Missouri, together with main compressor stations and branch pipe lines incident to the delivery of natural gas to industrial consumers and to distributors to communities along the route. All of the first mortgage bonds of the company were held by institutions. The 6 per cent notes payable and all the common stock were held by affiliates.

The Michigan Gas Transmission Corporation is engaged in the purchase and transmission of natural gas. The company owns a transmission line which commences at the Illinois-Indiana State line near Dana, Indiana, connecting at that point with the main line of the Panhandle Eastern Pipe Line Company, and extends to Muncie, Indiana, where it connects with the line of the Ohio Fuel Gas Company.

The company also owns a pipe line extending to Detroit, Michigan, from Zionsville, Indiana, through which it transports natural gas to Detroit for the account of Panhandle Eastern Pipe Line Company. Natural gas is purchased from Panhandle Eastern Pipe Line Company and sold by the company at wholesale only.

All of the company's outstanding securities, consisting of notes payable amounting to $6,470,500 and $2,240,000 of common stock, were held by Columbia Gas & Electric Corporation.

The Natural Gas Pipeline Company of America is engaged in the purchase and transmission of natural gas. Gas from the Texas Panhandle field is purchased by the company from Texoma Natural Gas Company and Colorado Interstate Gas Company at a point of delivery near Gray, Oklahoma. The company transports the gas through it own transmission system extending through the states of Oklahoma, Kansas, Nebraska, Iowa, and Illinois, to Joliet, Illinois, where the gas is delivered to Chicago District Pipeline Company which sells the gas to utilities for distribution in the Chicago area. Comparatively small amounts of gas are sold by the company at different points along its main transmission line, the largest proportion of such gas being sold for resale to communities in Iowa.

The company's securities, consisting of First Mortgage 6 per cent bonds due 1946 in the amounts of $42,300,000 and $3,000,000 book amount of common stock, were all held by affiliated interests.

The New York State Natural Gas Corporation is engaged in the production and transmission of natural gas in northwestern Pennsylvania and southwestern New York where gas is produced and transported for sale to distribution systems of others in several cities and towns in central New York, of which Syracuse, Auburn, Cortland and Ithaca are the most important. The system, including pipe lines of an affiliate, Keuka Construction Corporation, consists of approximately 256 miles of pipe lines owned or leased gas rights on approximately 325,500 acres of land and 36 wells.

The company's securities, consisting of income notes and

common stock, were all owned by Lycoming United Gas Corporation, a subsidiary of Standard Oil Company (New Jersey).

The Northern Natural Gas Company is engaged in the production, purchase, transmission and distribution of natural gas. The company and subsidiaries own and operate approximately 2,200 miles of natural gas transmission lines, extending from the Texas Panhandle and Hugoton, Kansas, fields to South Dakota and Minnesota. The main transmission lines are largely 24 inches in diameter. Natural gas is sold principally at wholesale in Iowa, Kansas, Nebraska, South Dakota, and Minnesota. Cities supplied at wholesale include Omaha and Lincoln, Nebraska; Council Bluffs, Des Moines, Sioux City, Mason City and Fort Dodge, Iowa; Sioux Falls, *South* Dakota; and Minneapolis and Rochester, Minnesota. The company's First Mortgage, 3¼ percent, 1954 bonds and the 2⅛ percent notes due 1940-1946 were all held by institutions. The bonds were sold to the institutions in August of last year. The common stock of the company was all held by three affiliates.

The Panhandle Eastern Pipe Line Company is engaged in the production, purchase, transmission and distribution of natural gas. The company owns a natural gas transmission system extending from the Amarillo gas field in the Texas Panhandle through Oklahoma, Kansas, Missouri and Illinois to a point near Dana, Indiana, adjacent to the Illinois-Indiana State line. The major portion of the gas transmitted is sold at wholesale to other gas transmission and distributing companies and the balance is sold to industrial consumers. The principal distributing company served is the Michigan Consolidated Gas Company which supplies gas to consumers in Detroit, Michigan, and vicinity. The company's transmission system consists of approximately 2,100 miles of pipe line. The First Mortgage, 4 percent, 1952 bonds of the company were owned in part by the public, but largely by institutions. The bonds were issued in March 1937. The preferred stock, both Series A and Series B, was all held by the Columbia Oil & Gasoline Corporation, and the common stock was held by the Columbia Oil & Gasoline Corporation and by the Missouri-Kansas Pipe Line Company.

The Pittsburgh & West Virginia Gas Company is engaged in the production, purchase, transmission, distribution and sale of natural gas. The company operates 1,375 miles of pipe line and serves gas to 44 communities in the State of West Virginia, and sells gas at wholesale to a number of companies. The outstanding notes of the company, amounting to $13,090,446, were held by affiliated companies. All of the common stock of this company was held by Philadelphia Company, a Standard Gas & Electric subsidiary."

The Southern Natural Gas Company is engaged in the transmission of natural gas. The company purchases gas under long term contract from the Monroe and Richland fields in Louisiana and transports gas from these fields to markets in Mississippi, Alabama and Georgia. The main line extends eastward to Atlanta, Georgia, and comprises approximately 504 miles of pipe line mileage but parallel transmission lines and a branch line to Columbus, Georgia, bring the total length of the system to 1,300 miles. Gas is sold chiefly to 12 distributing companies. The First Mortgage, 4½ percent, 1951 bonds were held almost equally by the public and by institutions. The First Mortgage, 4½ per cent, 1952 bonds were all held by institutions. The Adjustment Mortgage bonds of 1960 were held in approximately equal amounts by the public and by affiliates, a small portion being held by institutions, and notes in the amount of $800,000 were held by banks. Of the common stock of an aggregate par value of $5,189,776, $2,698,684 was in the hands of the public and the balance was owned by affiliates. The Adjustment Mortgage bonds were issued in 1936, pursuant to a reorganization plan, to holders of predecessor company's convertible 6 percent debentures, 1944, and to holders of filed and allowed claims on the basis of $500 of the new adjustment bonds, plus 48 shares of new Class A stock, for each $1,000 principal amount of old debentures and each $1,030 of claims. The Class A stock together with Class B stock was subsequently converted into the persently outstanding common stock.

The Texoma Natural Gas Company is engaged in the production and transmission of natural gas. The company owns a 24-inch main pipe line extending approximately 76

miles from Fritch, Texas, to a point near Gray, Oklahoma, where it connects with the transmission system of the Natural Gas Pipeline Company of America. The company produces all of its requirements from its own wells in the Amarillo gas field in the Texas Panhandle, and sells the major portion of the gas produced to the Natural Gas Pipeline Company of America. The company's properties also include a refinery at Fritch, Texas, for the purification of natural gas and the extraction of gasoline.

The outstanding securities of the Texoma Natural Gas Company consist of $18,750,000 principal amount of Gas & Pipeline Mortgage, 6 percent, 1946 bonds, all owned by Natural Gas Pipeline Company of America, and 10,000 shares of no-par-value common stock stated, at the book amount of $500,000, which are owned by a group of five affiliates.

The United Fuel Gas Company is engaged in the production, purchase, transmission and distribution of natural gas. The company's production operations are carried on in West Virginia and it sells principally at wholesale to distribution companies in West Virginia, Kentucky and Ohio, although it also supplies natural gas to many communities in West Virginia as well as in southeastern Ohio at retail. The 4 percent notes of the company, due 1940-1946, in the amount of $4,500,000 were all held by institutions. Other notes aggregating $14,535,000, were held by the Columbia Gas & Electric Corporation and all of the common stock was held by the same company.

The United Gas Pipe Line Company is engaged in the purchase, and transmission of natural gas. Gas is purchased principally at the wells in Texas, Louisiana and Mississippi, and is gathered and transported for sale to distributing systems of United Gas Corporation, to industrial corporations, and to others. The company owns 4,743 miles of main pipe lines in Texas, Louisiana, Mississippi, Alabama and Florida. The company, therefore, has long pipe lines serving a very wide territory. All of the outstanding securities of the company were held by affiliates, the debentures and common stock being owned by the United Gas Corporation, and the bonds being held by Electric Bond & Share Company.

The United Natural Gas Company is engaged in the production, purchase, transmission and distribution of natural gas and obtains its supply from northwestern Pennsylvania. The company supplies gas to several towns in Pennsylvania and a large quantity of gas is sold to Iroquois Gas Corporation, an affiliated company, for distribution in western New York. The only security the company had outstanding was common stock, all of which was held by the National Fuel Gas Company.

The Warfield Natural Gas Company is engaged in the production, purchase, transmission, distribution and sale of natural gas. The company operates approximately 500 miles of pipe line, including gathering and transmission mains, and supplies gas to a number of communities in the State of Kentucky, the principal community being Ashland. The company's principal customers are affiliated companies. The notes of the company outstanding in the amount of $9,790,000 as well as all of the company's common stock are held by the parent company, Columbia Gas & Electric Corporation.

Schedule 5-A—Schedule 5-A lists the bond and debenture issues of the companies included in Schedule 5 of which any portion was held by the public. The schedule also lists the bond issues of such companies which were outstanding in the hands of the public during a part of the period 1937-1939, but which had been retired before the end of that period. For each issue the schedules shows the name of the issuing company, a description of the issue, the total principal amount outstanding, the portion thereof held by the public and the ratings assigned by Moody's and Poor's publications. The schedule next shows the averages of high and low market prices for the years 1937 to 1939, inclusive, and for the first nine months of 1940, together with the approximate yields to maturity based thereon. This information is followed by data on market prices as of September 30, 1940, and yields to maturity based on such prices. The last two columns of the schedule show the respective current call prices for general and sinking fund purposes.

The first issue shown in Schedule 5-A consists of First Mortgage 4 percent Bonds, due 1951, of Arkansas Louisiana

Gas Company. This issue, which carried Moody's and Poor's A rating, was offered to the public in 1936, as shown in Schedule 6, at a price of 98 to yield 4.18 percent to purchasers. On the basis of average high and low market prices the yield to investors was slightly less than 4.00 percent in 1937 and 1938, and 3.69 percent in 1939. The bonds were retired in connection with refunding operations in October 1939, when the company sold privately one issue of short-term, and one issue of long-term, serial bonds at par to yield 2.75 percent and 3.50 percent, respectively, to purchasers.

The next issue listed is that of El Paso Natural Gas Company, consisting of First Mortgage 4½ percent Bonds, due 1951. These bonds were also offered to the public in 1936, as shown in Schedule 6, and were *wold* at a price of 98½ to yield 4.64 percent. The issue carried Moody's Ba rating and Poor's B** rating. The bonds were selling above par in 1937 and 1938 to yield 4.17 percent and 4.09 percent, respectively, but were retired in January 1939 with the proceeds of an issue of 3 percent Serial Notes and a new issue of First Mortgage 3½ percent Bonds, due 1953. The new bonds were sold privately at 99 to yield 3.59 percent to purchasers. In 1940 the company sold privately $3,000,000 principal amount of First Mortgage 3 percent Bonds, due 1955, at 98½ to yield 3.13 percent.

The next issue shown on Schedule 5-A is that of Houston Gulf Gas Company designated as First and Collateral 6's of 1943. These bonds were originally offered in April 1928 at 99½ in the amount of $11,000,000. At December 31, 1939, $4,238,000 principal amount was outstanding, of which $3,777,000 was held by the public. The bonds are indicated as carrying Moody's Ba rating and Poor's B** rating. Moody's rating was revised from Baa to Ba on October 28, 1939, but Poor's rating has not been revised.

The 6½ debentures, due in 1943, were originally offered in May 1928 at 99 in the principal amount of $8,000,000. They were convertible at par into 7 percent preferred stock, Series B, until March 31, 1938. The amount outstanding at December 31, 1939 was $1,850,000 of which $1,453,000 was held by the public. Moody's and Poor's ratings are re-

ported at B and B*, respectively. Moody's rating on the debentures was also revised in conjunction with its revision of rating on the 6 percent bonds, in this instance the rating having been lowered from Ba to B on October 28, 1939 and, as above, with no change in Poor's rating.

As indicated in Schedule 5-A, the outstanding bonds and debentures of Houston Gulf Gas Company were called for redemption on October 1, 1940, at 101. They were called in connection with proposed refunding operations of United Gas Corporation which, through United Gas Pipeline Company, owns a 99.6 percent interest in the common stock of Houston Gulf Gas Company. Inasmuch as notice of call was published prior to September 30, 1940, the September 30 bid price in each instance was the same as the call price. However, market prices for 1940 preceding notice of call averaged 102¾ for the bonds and 101⅞ for the debentures, resulting in yields of 5.00 percent and 5.82 percent, respectively. These yields were somewhat lower than those for 1939 but were substantially below the corresponding yields of 5.75 percent and 6.58 percent for 1937.

The First Mortgage 4 percent Bonds, due 1952, of Panhandle Eastern Pipe Line Company were quoted on September 30, 1940, at 103⅜, or 1⅜ points above call price, resulting in a yield of 3.63 percent. These bonds, which carry both Moody's and Poor's A rating, were sold by public offering in March 1937 on a 4.23 percent yield basis, as shown in Schedule 6. However, the yield established for the remainder of that year, based on average market price, was 4.06 percent. The yield declined to 3.85 percent in 1938 and to 3.77 percent in 1939, and, as above indicated, was still lower in 1940. Of the $23,000,000 principal amount of bonds outstanding, holdings by the public amounted to $4,918,000.

The bonds of Southern Natural Gas Company listed in Schedule 5-A include two issues, consisting of First Mortgage 4½ percent Bonds, due 1951, Baa and B** rating, and Adjustment Mortgage 6 percent Bonds, due 1960, B and B* rating. On September 30, 1940, the 4½ percent bonds were quoted at 106⅝, or 1⅝ points above call price, resulting in a yield of 3.75 percent while the 6 percent bonds were quoted at 100½ point above call price, resulting in a yield of 5.96

percent. The current yields on both bond issues are substantially lower than the 1937 yields of 4.70 percent for the 4½ percent bonds and 7.44 percent for the 6 percent bonds. Public holdings of both the 4½ percent and 6 percent issues constituted approximately one-half of the total principal amount outstanding.

It will be noted that the total shown in Schedule 5-A under the column "Held by Public," $19,411,523, is in agreement with the total designated as Bonds, Debentures and Notes Held by the Public in the summary on Page 5 of Schedule 5.

An additional fact which should be mentioned concerning the issues listed in Schedule 5-A is that in each instance the trust indenture contains provisions for the gradual retirement of the issues through sinking fund operations.

Schedules 5-B and 5-C—These schedules show the individual holdings by institutions and affiliates, respectively, of bonds, notes and debentures of the companies included in Schedule 5.

Schedule 5-D—Schedule 5-D contains similar information with respect to preferred stock held by the public as was shown in Schedule 5-A for bonds and debentures of the companies listed in Schedule 5. However, Moody's publications do not assign ratings to capital stock issues; therefore, only Poor's rating is given.

The schedule shows that only two of the 25 companies listed in Schedule 5 had preferred stock issues of which any part was outstanding in the hands of the public, and the public held such a small portion of the preferred stock issues of Houston Gulf Gas Company that no market quotations for those issues were available.

It will be seen that the public held the entire amount of outstanding 7 percent preferred stock of El Paso Natural Gas Company, of which $600,000 appears to have been issued at date of organization in 1928 and the remainder through subsequent conversion of other securities. A yield of 6.36 percent is indicated for this stock on the basis of a September 30 bid price of 110. In this connection, it is of

interest to note that the bid price for this stock was equal to the call price.

End of month bid prices on the preferred stock of El Paso Natural Gas Company ranged from 94 to 107 in 1937, 102 to 109 in 1938, and 108 to 111 in 1939. The dividend record on this stock discloses that dividends in arrears amounting to $26.25 per share were cleared up on June 22, 1936, since which date dividends have been paid regularly.

The total of $1,491,800, shown as the last figure in the column headed "Held by Public" on Schedule No. 5-D is in agreement with the amount shown in the second column of the summary on Page 5 of Schedule 5 opposite Preferred Stock.

Schedule 5-E—It is believed that Schedule 5-E, which shows individual holdings by affiliated interests of preferred stock of the companies listed in Schedule 5, requires no comment.

Schedule 5-F—Schedule 5-F gives certain information relative to the common stock issues of the six companies included in Schedule 5 which had common stock outstanding in the hands of the public.

The schedule shows for each issue the name of the issuing company, the number of shares and book amount of common stock outstanding, the portion thereof *held* by the public, the par value, if any, and Poor's rating. Next are shown the earnings per share for the years 1937, 1938 and 1939, and for the latest twelve months for which reported; the averages of high and low market prices for the years 1937 to 1939, inclusive, and for the first nine months of 1940; and the earnings-price ratio, i. e., the percent of earnings per share to market price, for the periods indicated. Finally, there is shown for each issue the earnings-price ratio based on market price at September 30, 1940 and on latest earnings per share reported.

Market quotations could not be obtained for the common stock of Houston Gulf Gas Company as relatively few shares were held by the public. None of the common stock of Panhandle Eastern Pipe Line Company was held by the public

prior to September 1939. The presently outstanding common stock of Southern Natural Gas Company has been outstanding only since its issuance in May 1939 in exchange for the Class A and Class B stock formerly outstanding. Accordingly, only three of the six common stock issues listed in Schedule 5-F have been held by the public throughout the period 1937-1940, namely, those of El Paso Natural Gas Company, Interstate Natural Gas Company, Inc., and Memphis Natural Gas Company.

The earnings-price ratios of the respective common stock issues for the periods and on the basis indicated in Schedule 5-F are set forth in the following summary:

Company	Common Stock Earnings—Price Ratios 1937	1938	1939	1940	9/30/40
El Paso Natural Gas Co.	13.79%	14.08%	10.60%	11.37%	11.70%
Houston Gulf Gas Co.	(No Market Quotations)				
Interstate Natural Gas Co.	9.90	10.02	8.88	9.08	8.79
Memphis Natural Gas Co.	16.63	13.96	15.74	14.84	13.68
Panhandle Eastern Pipe Line Co.	—	—	9.61	13.03	11.97
Southern Natural Gas. Co.	—	—	18.14	20.37	18.25

Schedule 5-G—This schedule contains a list of the individual holdings by affiliates of common stock of the companies listed in Schedule 5. None of such common stock is held by institutions.

Schedule 6—Schedule 6 contains a compilation of bond issues sold by the natural gas companies listed in Schedule 5 during the years 1935 to 1940, inclusive. The issues are grouped according to Moody's ratings, and for each issue there appears the name of the issuing company, the approximate offering date, a description of the issue, principal amount of the offering, net cost to company and price to public. In addition, the schedule shows the distribution of holdings of those issues still outstanding among public holders, institutional holders, and affiliates.

Under "Net Cost to Company" are shown the net proceeds to the company per $100 of principal amount after underwriters' commissions and other expenses and in the adjoining column a percentage representing the annual cost of the funds borrowed calculated to maturity. Under "Price to Public" are shown the selling price to the public and in the adjoining column a percentage representing the annual yield to purchasers calculated to maturity.

The first issue shown in Schedule 6 is that of Arkansas-Louisiana Gas Company offered in July 1936, which consisted of First Mortgage, 4 percent bonds, due 1951 in the amount of $10,000,000, with a rating of A. On this issue the yield to the public was 4.18 percent and cost to the company 4.62 percent. These bonds were refunded in September 1939 when, as shown in the lower portion of the schedule, $3,300,000 First Mortgage 2¾ percent Series A bonds due 1940-44 and $9,700,000 First Mortgage 3½ percent Series B bonds due 1945-54 were sold privately at par to yield 2.75 percent and 3.50 percent, respectively. The cost to the company was 3.01 percent on the 2¾ percent bonds and 3.59 percent on the 3½ percent bonds.

The Panhandle Eastern Pipeline Company in March 1937 issued $24,000,000 of first mortgage 4 percent *conds* due in 1952, with rating of A, at a yield of 4.23 percent and cost to the company of 4.46 percent. These bonds were selling to yield 3.63 percent at September 30 and the market price was above call price at that date.

The Southern Natural Gas Company, in November 1936, issued $15,000,000 principal amount of first mortgage 4½ percent bonds due in 1951, rating Baa, at a yield of 4.50 percent and net cost to the company of 4.85 percent. At September 30 these bonds were selling at a price in excess of call price on the basis of a yield of 3.75 percent. In *Octover* 1937, Southern Natural Gas Company negotiated the private sale of $650,000 principal amount of 4½ percent first mortgage bonds due in 1952 at a yield to purchasers of 4.71 percent. The proceeds were deposited with the corporate trustee to be drawn against for expenditures made for bondable property.

The El Paso Natural Gas Company, in June 1936, issued

first mortgage 4½ percent bonds due 1951, rating Ba, in the amount of $7,500,000, at a yield to the public of 4.64 percent and cost to company of 5.06 percent. Also in June 1936, the company sold $3,750,000 principal amount of 4¾ percent convertible debentures, due in 1946, at a yield to investors of 4.75 percent and cost to company of 5.38 percent. The debentures carried Moody's B rating. It is reported that the conversion privilege was exercised by holders of virtually the entire debenture issue, such conversion resulting in the issuance of approximately 225,000 of the 600,000 presently outstanding shares of the company's common stock. The same company in October 1937 sold privately an issue of $1,200,000 first mortgage 4 percent bonds due in 1952 at a yield to purchasers of 4.20 percent, the purpose of the issue having been to reimburse the company's treasury for construction expenditures previously made and to provide additional working capital.

In connection with refunding operations the El Paso Natural Gas Company in December 1938 sold privately a $6,000,000 issue of first mortgage 3½ percent bonds, due in 1953, at a yield to purchasers of 3.59 percent. The proceeds from this issue, together with funds obtained through the issuance of 3 percent Serial Notes in the amount of $4,000,000 to Chase National Bank, were applied to the redemption on January 16, 1939, of the outstanding principal amount of bond and debenture issues sold in 1936, 1937 and 1938, and to retire $600,000 of short-term notes and for other corporate purposes.

In June and July 1940 the El Paso Natural Gas Company sold *privately* two issues of first mortgage 3 percent bonds due in 1955 in the aggregate principal amount of $3,000,000 to yield 3.13 percent. The proceeds from these issues are reported to have been used for the retirement before maturity of $1,500,000 of bank loans and for other corporate purposes.

The last group of issues shown in Schedule 6 includes all issues which were sold privately during the period 1935-1940. It will be noted that Moody's assigns no rating to issues that are sold in this manner.

The first item shown is the first mortgage 4 percent bond issue, due 1952, of the Mississippi River Fuel Corporation

sold in February 1937 to yield 4 percent at an assumed price of par to purchasers.

The issues sold privately by El Paso Natural Gas Company and Southern Natural Gas Company have already been referred to above.

The Cities Service Gas Company in December 1938 issued $20,000,000 principal amount of 3¾ percent first mortgage bonds due serially in the years 1947-54. The bonds were sold privately at par to yield 3.75 percent. At the same time the company negotiated bank loans in the amount of $15,000,000 secured by an equal principal amount of first mortgage 3¼ percent bonds due 1940-46.

The Northern Natural Gas Company, in August 1939, issued first mortgage 3¼ percent bonds due 1954 in the principal amount of $16,000,000 at a yield to the public of 3.25 percent, and cost to the company of 3.35 percent. These bonds were issued for refunding purposes. At the same time the company issued unsecured promissory notes to the Chase National Bank in the amount of $6,000,000 carrying interest at 2⅛ percent and maturing over the period 1940-1946. It was reported that the proceeds from these unsecured promissory notes were to be used as follows: $3,600,000 for construction of a 240-mile pipe line from Sioux City, Iowa, to Minneapolis; $1,200,000 for compressor station property, lateral pipe lines, distribution system properties of subsidiaries and development costs, all directly incidental to the pipe line; and $1,200,000 to defray cost of additions and betterments to the company's existing property, including distribution systems of subsidiaries, etc.

The issues of Arkansas-Louisiana Gas Company in September 1939 have already been described.

In conclusion, with respect to Schedule 6, there are two additional facts which should be mentioned. In the first place, a characteristic feature of natural gas company bond issues, arising from the fact that the business of such companies is based on exploitation of a wasting resource, is their relatively short life to maturity. As will be seen from the schedule this life generally does not exceed 15 years, whereas for electric utility bond issues the life is generally 25 or 30 years. For example, of the 15 issues listed in

Schedule 6, eleven have a 15-year life to maturity, one has a 10-year life, and three have serial maturities. Of these three, the last maturity date is 16 *yeats* from date of issue in one instance; 15 years in another instance, and only five years in the case of Arkansas-Louisiana Gas Company's first mortgage 2¾ percent bonds due 1940-44.

Finally, in the case of each of the bond issues listed in Schedule 6, the trust indenture contains provisions relative to sinking fund requirements with a view toward the gradual retirement of the bonds over the life of the issue. The only exceptions that will be noted are the three issues having serial maturities, and a provision for serial maturities accomplishes the same purpose as redemption through sinking fund operations.

In the preceding discussion with respect to the ownership, issuance, prices and yields of securities of natural gas pipe-line companies, reference has been made to the limited data available regarding yields on securities of such companies because of the predominant ownership of their securities by affiliated interests. Moreover, the facts that ten of the fifteen bond issues sold by such companies in the period since 1935 were disposed of privately by negotiation with institutional investors has had the effect of limiting the number of bonds of representative companies actually traded in on the market. Consequently, with only 5.9 percent of bonds, debentures and notes, 5.9 percent of preferred stocks, and 3.4 percent of the common stocks of a representative group of 25 companies being outstanding in the hands of the public and traded in on the market, it follows that caution must be exercised in relying upon the limited data available with respect to market appraisal of securities of natural gas pipe-line companies in attempting to ascertain the opportunity cost of capital under existing market conditions for particular companies engaged in natural gas pipe-line operations.

Corporate Affiliations of Canadian River Gas Company, Colorado Interstate Gas Company, and Colorado-Wyoming Gas Company and Recent Financing by Affiliated Companies

Chart 4—This chart is presented for the purpose of showing the corporate affiliations of the companies involved in

the present proceedings. The chart shows that all of the common stock of Canadian River Gas Company is owned by Southwestern Development Company whose stock, in turn, is owned by Consolidated Oil Corporation (51 percent) and by The Mission Oil Company (47.28 percent).

It will be noted that the Southwestern Development Company also controls the Amarillo Oil Company and the Clayton Gas Company, two customer companies of Canadian River Gas Company, and has a substantial minority stock interest in Natural Gas Pipeline Company of America and in Texoma Natural Gas Company. The Natural Gas Pipeline Company of America purchases 25 per cent of its gas requirements from Colorado Interstate Gas Company which in turn obtains its total requirements from the Canadian River Gas Company, and deliveries by Colorado Interstate Gas Company are made to Natural Gas Pipeline Company of America through facilities leased from Texoma Natural Gas Company.

It will also be noted that two customer companies of Amarillo Oil Company, itself a subsidiary of Southwestern Development Company, are also wholly-owned subsidiaries of the latter company. The two customer companies referred to are the Dalhart Gas Company and the Panhandle Pipe Line Company. Another wholly-owned subsidiary of Southwestern Development Company is the Amarillo Gas Company which purchases its requirements from the Panhandle Pipe Line Company.

Further reference to Chart 4 will show that the Southwestern Development Company owns a 42.5 percent stock interest in Colorado Interstate Gas Company. An equal percentage of the latter's stock is owned by Standard Oil Company (New Jersey), and the remainder is held by Public Service Company of Colorado. Standard Oil Company (New Jersey) also owns a substantial minority interest in Natural Gas Pipeline Company of America.

With respect to Public Service Company of Colorado it will be noted that its common stock is 99.99 percent owned by Cities Service Power & Light Company. The latter company's stock is owned to the extent of 91.88 percent by the Cities Service Company, although such stock has been pledged by Cities Service Company under an indenture se-

curing its outstanding debentures, and voting rights therein have been relinquished to the trustee under that indenture. It will also be seen that the Cities Service Company owns a substantial minority interest in the capital stock of Natural Gas Pipeline Company of America.

Further examination of Chart 4 will disclose that Public Service Company of Colorado is the sole owner of all outstanding stock of Colorado-Wyoming Gas Company. The latter company's capital stock, consisting of 50,000 shares without par value, is reflected on its books at $1,501,000, and the company has no funded debt. Not shown on the chart is the 100 percent ownership by Public Service Company of Colorado of Cheyenne Light, Fuel & Power Company, which is engaged in the production and distribution of electric energy and in the purchase (from Colorado-Wyoming Gas Company) and distribution of natural gas in Cheyenne, Wyoming.

Schedule 7—This schedule contains certain information with respect to recent financing by companies affiliated directly and indirectly with the companies involved in the present proceedings. The data in Schedule 7 disclose financing by Consolidated Oil Corporation, Public Service Company of Colorado, Standard Oil Company (New Jersey), and Southwestern Development Company from 1936 through September 1940.

Consolidated Oil Corporation—The first issue listed for this company was sold in June 1936 and consisted of $50,000,000 of 3½ percent Debentures due 1951 which were offered to purchasers at 98 to yield 3.67 percent to maturity. In August 1938 the company negotiated the private sale at par to Equitable Life Assurance Society of 3⅜ percent Debentures due 1950 in the amount of $25,000,000.

Public Service Company of Colorado—In November 1939 this company offered publicly a $40,000,000 issue of First Mortgage 3½ percent bonds due 1964 at 102 to yield 3.38 percent, and a $12,500,000 issue of 4 percent Debentures due 1949 at 102 to yield 3.76 percent.

Standard Oil Company (New Jersey)—This company in May 1936 issued $85,000,000 principal amount of 3 percent

Debentures due 1961 of which $30,000,000 were offered publicly and $55,000,000 were sold privately to Rockefeller Foundations. The price to purchasers for the 3 percent Debentures was 98, resulting in a yield to maturity of 3.12 percent. In July 1938 the company issued $50,000,000 of 2¾ percent Debentures which were offered at 99 to yield 2.83 percent, and $35,000,000 of 1¾ percent—2½ percent Serial Notes offered at par of which $4,000,000 were *sold* to the Rockefeller Institute for Medical Research and the remainder were sold to the public. These notes were redeemed on July 2, 1940, funds for their redemption having been obtained from the issuance of $35,000,000 1¼ percent 1½ percent Promissory Notes sold at par. Of the latter notes $14,000,000 consisted of 1¼ percent notes due July 1, 1943 and 1944 which were sold privately to two purchasers, and $21,000,000 consisted of three 1½ percent notes due July 1, 1945, 1946 and 1947, respectively, evidencing borrowings from two banks.

Southwestern Development Company—On July 1, 1936, this company obtained a 2-4 percent loan, secured by collateral and due 1937-1941, from the Guaranty Trust Company of New York. The collateral consisted of certain of the company's holdings of securities in natural gas companies. Subsequently a reduction in interest rate from 4 percent to 3½ percent and an extension of maturity date were obtained with approval of the Securities and Exchange Commission and a new 3 percent collateral note, in exchange for the outstanding 3½ percent note, was issued on August 1, 1939.

In December 1936 and 1937 the company issued its unsecured 4 percent notes to holders of its common stock in payment of dividends at the rate of $43.18 per share in 1936 and $50.00 per share in 1937. The notes issued in December 1936 were redeemed on January 3, 1938.

On November 1, 1937, the company negotiated a $3,292,000 collateral loan, 4 percent, due 1939-1943, from the Guaranty Trust Company of New York. The collateral consisted of 6 percent First Mortgage and Collateral Trust Sinking Fund Gold Bonds, due January 1, 1945, of South Plains Pipe Line Company (assumed by West Texas Gas Company, a wholly-owned subsidiary of Southwestern Development

Company). The Southwestern Development Company obtained approval of the Securities and Exchange Commission of the sale of $3,150,000 principal amount of the above 6 percent bonds to the West Texas Gas Company and applied the proceeds to the discharge of the unpaid balance of its 4 percent collateral loan dated November 1, 1937. The West Texas Gas Company had obtained the funds with which to purchase the bonds from Southwestern Development Company through a 3 percent collateral loan, due January 1, 1945, made by the Guaranty Trust Company of New York.

The most recent financing by the Southwestern Development Company was undertaken in January 1940 when the company arranged with the Guaranty Trust Company of New York a 3 percent collateral loan, due, 1940-1945, in order to redeem the 4 percent unsecured notes issued for dividend purposes in December 1937 and to liquidate the balance of the 3 percent collateral loan dated August 1, 1939 and due July 1, 1944."

(Vol. 74, pp. 10794-10929.)

* * * * *

Q. Mr. Knapp, since the time of the completion of your rate of return study, Exhibit No. 225 and Exhibit No. 225-A, I will ask you whether you have had the opportunity to learn about the refunding operations of the Panhandle Eastern Pipeline Company that took place sometime during the month of January 1941.

A. I have.

Q. Could you explain briefly what additional information you obtained concerning those matters?

A. The Panhandle Eastern Pipe Line Company on January 30, 1941 made a public offering through an underwriting group of $12,000,000 principal amount of 3 per cent Series B first mortgage and first lien bonds, dated November 1, 1940 and maturing November 1, 1960. These bonds carrying Moody's A rating were offered to the public at a price of 102 per cent of principal amount to yield 2.87 per cent to purchasers.

In conjunction with the public offering of Series B bonds, the company sold privately $6,250,000 principal amount of Series A bonds to four banks and an insurance company.

The Series A bonds were dated November 1, 1940 and are to mature serially in equal annual instalments on November 1, 1946 to 1950, inclusive, with interest rates ranging from 1.65 per cent to 2.30 per cent according to maturity.

At the same time the company arranged for the private sale of $5,000,000 face amount of Serial notes due in four equal instalments on November 1, 1942 to 1945, inclusive, with interest rates ranging from .75 per cent to 1.50 per cent according to maturity.

It was reported that the proceeds of the three issues were to be applied to the reduction of all of the company's outstanding $22,500,000 principal amount of first mortgage and first lien Series A four per cent bonds due March 1, 1952.

Q. Does that complete your investigation as to that particular refunding operation?

A. It does.

(Vol. 83, pp. 12301-12302.)

* * * * * *

Q. Do these three volumes constitute your entire study of the rate of return as applied to this case?

A. I have studied some of the phases other than that.

Q. What other phases did you study?

A. I have read the contracts of Colorado Interstate Gas Company, Canadian River Gas Company, and some of the contracts of Colorado-Wyoming Gas Company—

Q. Some of the contracts?

A. —and I have read and studied testimony and cross examination of other witnesses on rate of return in this proceeding; I have also read some exhibits relating to natural gas reserves of these companies; I have tried to acquaint myself with the corporate background of these companies. I think in a general way that gives you what you want, if I understand your question.

Q. All of this reading you have just referred to as having done, did that involve any factor or factors material in the rate of return that should be in your judgment allowed in this case to any of these companies?

A. I don't know that I have a right to answer that ques-

tion, Mr. McCreery. I have not testified as to a rate of return in this proceeding, a specific recommended rate of return.

Mr. McCreery: I ask for an answer to that question, Mr. Examiner.

The Witness: Will you read it back?

(The question referred to was read by the reporter as set forth above.)

The Trial Examiner: Now, this witness, Mr. McCreery, has not endeavored to testify as to the rate of return that is to be allowed in this proceeding.

By Mr. McCreery:

Q. Were there factors of any importance in your study of rate of return as to what you defined in your study?

A. I felt obligated to become as familiar as I could with everything pertaining to these companies. Just how much of that you can express in writing is a difficult thing to state.

Q. But your rate of return study is in relation to these particular companies, is it not? You are not writing a treatise on the subject. You are writing a study on rate of return in respect to these three companies, are you not?

A. That is correct.

Q. Are there any special factors of any kind in connection with these three companies that would be material in a rate of return study of any of these companies which are not in Exhibits 225 and 225-A?

Mr. Lange: That would be a pure conclusion of the witness for him to say any factors are in these records he hasn't considered or that he might consider. He has stated what he has considered and it is set forth in his exhibits. The exhibits speak for themselves.

Mr. McCreery: I still have a right to cross examine the witness irrespective of what he says, Mr. Lange.

Mr. Lange: That is true.

Mr. McCreery: That is what I am doing.

Mr. Lange: For him to be asked to reach a conclusion as to whether he has considered all of the factors in this case or factors relative to a rate of return would be purely a conclusion.

Mr. McCreery: This record is full of conclusions, the cross examination this morning is full of conclusions, and I want to put in a few more of them.

The Trial Examiner: Will you please read the question, Mr. Reporter?

(The question referred to was read by the reporter as set forth above.)

Mr. Lange: This is the question counsel is asking, Mr. Examiner, as to whether he knows of any factor bearing on the rate of return or that are essential to a rate of return study that he has in his exhibits.

The Trial Examiner: I think that is a proper question. You may answer.

The Witness: Would you read that question once more, Mr. Reporter?

(The question referred to was reread by the reporter as set forth above.)

The Witness: Now, this rate of return study that I referred to does not purport to set forth all of the facts and factors which would have a bearing on the rate of return. The whole record, as I understand it, is to be considered in arriving at a determination.

By Mr. McCreery:

Q. Then in your rate of return study you are dealing only with the very broad generalizations contained in these two exhibits with respect to industry in general, utilities in general, interest rates in general, and that sort of thing?

A. I think that the exhibit speaks for itself.

Q. I asked for an answer to my question.

A. You use the word "general" so frequently there. It seems a good part of that information is pretty specific, relating to individual companies, natural gas companies.

Q. Have you made or incorporated in this study any

factors with respect to the operations or characteristics of these particular companies here involved in this case?

A. No, I have not.

Q. You are not actually familiar with the Colorado-Wyoming Gas Company as an operating unit, are you?

A. I can't answer that question. If you ask me specific questions I will try to answer them.

Q. That is a specific question.

A. That is a general question.

Q. All right, answer that one, then.

A. I know something about the company's operations and to whom it sells gas—

Q. Have you made—

Mr. Lange: Had you finished your answer to the first question?

The Witness: No. I have studied or read the exhibits of the accounting witnesses for Colorado-Wyoming Gas Company—

By Mr. McCreery:

Q. You mean the Federal Power Commission's accounting witnesses?

A. That is correct. And I have read what Mr. Bosworth had to say about the Colorado-Wyoming Gas Company. I can't claim to have a complete knowledge of all of the details but still I—

Q. I wasn't asking you to. I asked you how much you had investigated.

A. I have attempted to familiarize myself with the company.

Q. You haven't reflected that in any part of these exhibits, however?

A. To the extent that I show its corporate affiliations in a chart—

Q. Aside from that you haven't dealt with the operating conditions in this exhibit, have you?

A. Just what do you mean by operating conditions, Mr. McCreery?

Q. The method in which it buys gas, sells gas, and its contracts in relation to such a purchase and such sales.

A. I know how it buys the gas or where it buys its gas,

and I know at least for 1939—I think I can give you information on the companies to whom it sold gas.

Q. But that is not embodied in this report, is it?

A. It is not embodied in this report.

Q. And you didn't think it material enough to embody it in this report?

A. I wouldn't say that, Mr. McCreery. As I have tried to explain, this report is presenting certain facts and factors connected with the subject of the rate of return. It would be physically impossible for me personally to become acquainted with all of the details in this record, and certainly it couldn't be done before the hearing was held, so I have no excuse to offer of any kind for failing to include that information in here. I think it is something that the Commission will undoubtedly consider along with the data in my exhibit.

Q. Do you think the terms of the various contracts of this company, for both the purchase and sale, might be material to a study of the rate of return?

A. A study of rate of return?

Q. Yes.

A. It might be if I were attempting to defend a specific recommended rate.

Q. Nobody is asking you to defend a specific recommended rate. I say, in that kind of a study is it a material fact, whatever the answer may be?

A. I don't think it is necessary for that kind of information to be presented in such a study as I have prepared.

Q. Would the fact that the gas supply of this company came entirely from outside the company, that the Colorado-Wyoming Gas Company was not a producing company, be a material fact in a rate of return study of that company?

A. It all hinges on the definition of what a rate of return study is.

Q. Would it be a material factor in such a study in your mind?

A. Not in such a study as I have made.

Q. Would the fact that other users and purchasers of gas had priority over this particular company in the use of gas, would that have a bearing in a rate of return study of this company?

A. Again I will answer you that this is not the sort of study I have prepared.

Q. What kind of a study did you prepare, then?

A. I prepared a study which I have described as containing a background of economic and financial operation which is necessary to have in arriving at any determination of rate of return.

Q. For whom?

A. For the Federal Power Commission.

Q. As applied to what company? this company?

A. As applied to this company.

Q. Then, have you furnished all of the elements and factors of importance for consideration of the Power Commission, or have you only undertaken to furnish these general items of information that are embodied in these two numbered exhibits?

A. I only undertook to furnish, Mr. McCreery, the information that is in that exhibit.

Q. What bearing in your study does the fact that there is some inter-relation between certain of the companies have in your rate of return study as set out in a table in Part 2 of your exhibit which is entitled "Chart 4"? Of what relevancy and importance are the matters as set forth there in this particular rate of return study?

A. I think it is always important in any rate of return study to attempt to show the corporate affiliations of the company involved in the particular proceeding. It is information that would be helpful to the Commission.

Q. Having set forth the facts, then you conclude as to whether it has importance or weight in determining what the facts are?

A. Will you read that question, please?

(The question referred to was read by the reporter as set forth above.)

Mr. McCreery: Strike that question.

Q. At the outset it is important to determine whether and what are the affiliate relations, is it not?

A. I have just stated that.

Q. Second, having found out what those relations are, isn't the next thing to determine whether they actually have any bearing or importance in the particular case?

A. They always have a bearing, Mr, McCreery.

Q. What bearing do they have in this case?

A. The Colorado-Wyoming Gas Company is a wholly-owned subsidiary—

Q. I have all of the facts before me. I don't want a repetition of the facts. I want you to state what the bearing is. Does that affect the purchase price of gas to this company or its operation because there is some indirect relationship to Colorado Interstate Gas Company? What practical bearing does it have in this proceedings?

A. With such a close affiliation, Mr. McCreery, it would seem to me that if ever the time came the Public Service Company of Colorado, which is a very important customer of Colorado Interstate Gas Company, would see to it that Colorado-Wyoming Gas Company got gas.

Q. Do you happen to know all of the relations between both Public Service Company of Colorado and Colorado-Wyoming Gas Company on the one hand and Colorado Interstate Gas Company on the other hand have been at arm's length throughout their entirety?

A. No, I don't.

Q. Did you inquire as to that? Did you make any inquiry along that line?

A. Will you read that question, please?

(The question referred to was read by the reporter as set forth above.)

The Witness: Does that question ask whether on the one hand the Public Service Company of Colorado and Colorado-Wyoming Gas Company have always dealt at arm's length with the Colorado Interstate Gas Company on the other hand?

Mr. McCreery: Put it that way.

The Trial Examiner: He asked whether or not you knew.

Mr. McCreery: Yes.

Q. I asked whether you knew what the facts were in connection with their contractural and other business relations.

A. I know this, that on April 5, 1927, a memorandum of stipulations was agreed upon between Southwestern

Development Company, Cities Service Company, and Standard Oil Company (New Jersey); that as the result of those stipulations the contractural arrangement between Public Service Company of Colorado and Colorado Interstate Gas Company was entered into.

Q. Was that contract entered into at arm's length and as the result of negotiations or not, or do you know?

A. I wouldn't say so, not on the face of it.

Q. You don't know, do you?

A. I mean here, this is the record of the stipulation.

Q. Suppose I would say to you that it took between 10 and 12 weeks of solid negotiation to enter into an effect a contract between Colorado Interstate Gas Company and the Public Service Company of Colorado. Would that indicate arm's length dealing?

A. It would indicate that Cities Service was trying to get the best bargain it could, Mr. McCreery.

Q. And that also Colorado Interstate Gas Company was trying to get the best bargain it could?

A. The fact is, however—

Q. Wait a minute. Answer that question. It indicates two parties trying to do their best bargaining, doesn't it?

A. It is very difficult to answer that question. Here you have on the one hand an agreement whereby Cities Service agrees to do certain things with Southwestern Development Company and Standard Oil Company (New Jersey) on the other hand, and you have an arrangement whereby a subsidiary of Cities Service attempts to make a contract with a subsidiary of Standard Oil Company. I can't see any arm's length dealings in such a situation as that.

Q. Did you ever inquire about it?

A. Well, I have—

Q. All you have is that record before you there?

A. I have read this memorandum of stipulations and I have read portions of the Federal Trade Commission's reports.

Q. Have you made any inquiry as to whether the contractural obligations entered into between Colorado Interstate Gas Company and Colorado-Wyoming Gas Company resulted only after long negotiations or not?

A. I don't know what the negotiations were, Mr. McCreery.

Q. You wouldn't know whether or not such a contract as was entered into in 1929 between the Colorado-Wyoming Gas Company and the Colorado Interstate Gas Company required some four to six weeks in negotiations?

A. I am not familiar with that.

Q. So you wouldn't know about that?

A. I am not familiar with that negotiation at all.

Q. Would the fact that the gas supply for the City of Denver and the City of Pueblo has priority over the gas supply served by the Colorado Interstate Gas Company to the Colorado-Wyoming Gas Company have a bearing on the risk inherent in the business of Colorado-Wyoming Gas Company?

A. Will you read that question, please?

(The question referred to was read by the reporter as set forth above.)

The Witness: To the limited extent that Pueblo and Colorado Springs had priority, my answer is yes.

By Mr. McCreery:

Q. I didn't say anything about Colorado Springs. I mentioned Denver and Pueblo.

A. To the very limited extent affecting the priority to the City of Pueblo, or Pueblo Gas & Fuel Company, there would be that element of risk, but I don't believe that it entered into the situtionwhen viewed in conjunction with the City of Denver.

Q. Why?

A. Because of the relationship existing between Public Service Company of Colorado and Colorado-Wyoming Gas Company.

Q. The benefit is to the citizens of Denver, not the Public Service Company of Colorado.

Mr. Lange: Of course that speaks for itself.

By Mr McCreery:

Q. Did you examine the ordinances by which natural gas was brought to Denver and the priority set forth in that agreement with the city?

A. I haven't examined any ordinances.

Q. You didn't go into that. So if there were a definite priority in favor of the City of Denver, the citizens of the City of Denver which could either curtail or shut off in case of sufficient demand the supply of gas to Colorado-Wyoming Gas Company, that would be an element or particular risk of merit, would it not?

A. In case of insufficient demand and—

Q. Insufficient supply.

A. I am sorry, insufficient supply, and qualified to the extent that the Public Service Company of Colorado would be able to, as I understand it, curtail the service to its industrial consumers and be able to supply gas to the Colorado-Wyoming Gas Company.

Q. Did you make any study of that question of priority?

A. I have read the contracts.

Q. I say, did you make any study of it?

A. I don't know what you mean by study. I have read the contracts, the provisions about priorities.

Q. Reading the contract without a study of the whole picture of gas supply and all of those things wouldn't give you an answer, would it, as to the character of the risk involved?

A. I have looked at Mr. Rhodes' exhibit on estimated peak load obligations in which he compares those obligations with pipe line flow capacity. I have examined that and have given it some thought.

Q. But that is not reflected in your study?

A. It is not reflected in my study.

Q. Because it was unimportant or because of what?

A. Because the scope of my exhibits didn't embrace that particular information.

Q. That is just what I started out to ask you at the outset. Your study wasn't directed to the particular character of operations, doing business and terms of doing business under which this particular company was operating, was it?

A. You are now speaking as studies of my exhibits?

Q. That is right.

A. The other time we were speaking of studies as what I had studied, and I had looked into those things.

Mr. McCreery: That is what I was trying to get at and

you could have answered it at the start and we would have been a lot further along.

The Trial Examiner: We will stand in recess for five minutes.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

The Trial Examiner: The hearing will be in order.

By Mr. McCreery:

Q. Mr. Knapp, as I understand your study, you set forth the more important facts and factors which should be considered in arriving at a fair and reasonable rate of return for the Colorado-Wyoming Gas Company, a small local unit operating between Littleton and Cheyenne, and the field you cover is from the California Edison to the Southern Natural Gas Company.

A. That is correct.

(Vol. 83, pp. 12395 to 12411.)

Company Exhibit No. 248 (Appendix this Record).

NET RETURN 1940-1945.

J. L. WILLARD, rate and valuation engineer, testified for Colorado-Wyoming Company on the subject of "Net Return."

(a) *"Net Return" (Company Ex. 248.)*

The witness identified Exhibit 248, prepared by him, which he explained and described as follows:

"This exhibit shows the net return in amount, and percentage of the yearly average present value of the property. Classifications are 'All Sales,' 'Total Sales for Resale,' and 'Sales for Resale at Cheyenne,' for each year from 1940 to 1945, both inclusive.

"The present values have been obtained from Revised Exhibits Nos. 111, 117 and 118, to which have been added allowances for Going Concern Value.

"Net to Reserves and Return has been obtained from Revised Exhibits Nos. 115, 117 and 118.

"Annual Depreciation Reserve has been determined by applying percentages obtained from Exhibit No. 200 to the depreciable property in similar classifications.

"Net Return in the two statements of this exhibit reflects amounts for Regulatory Commission Expense, in one instance in the year actually incurred, and in the other instance by amortizing the annual amount of this expense, beginning with the year 1939, over 5-year periods."

(Vol. 84, pp. 12,668, 12,669.)

(Abstracter's Note: The additional "Regulatory Commission Expense" projected for 1941 in Supplement to Exhibit 242 is not reflected in Exhibit 248.)

On cross-examination, in response to inquiry as to the purpose of the exhibit, the witness testified as follows:

"The purpose of this exhibit is to bring together data submitted on previous exhibits and from that data to calculate a return on the three classifications of property as shown on Sheets 1 and 2 of the calculations, the first calculation being all sales; the second being total sales for resale and the third being sales for resale at Cheyenne."

(Vol. 85, p. 12,840.)

The method of arriving at the 1940 plant values for "*All Sales*," "*Total Sales for Resale*" and "*Sales for Resale at Cheyenne*" is set out in Statement No. 3.

In line 1, "*Plant and Investment*" is as shown in revised Exhibits Nos. 111, 117 and 118 (Ex. 245), to which is added the "*Going Concern Value*" and "*Working Capital*" applicable to the three classifications.

The "*Depreciation Deducted*" is in accordance with the per cent condition of property found by Mr. Hancock in 1939 and 1940, and is reflected, without change, through the years 1940 to 1945.

The value for each of the years is averaged "by deduc-

tion of actual plant additions during each of the various years."

Statements Nos. 1 and 2 are each entitled "Net Return—Reflecting Revised Exhibits Nos. 111, 115, 117, 118, and including Going Concern Value." Statement No. 1 treats "*Regulatory Commission Expense*" as incurred, while Statement No. 2 amortizes such expense over 5-year periods, beginning in 1939.

The "*Depreciation Reserve*" on line 6 in each year (Statements Nos. 1 and 2) is the annual depreciation expense computed on a straight line basis. The per cent is that set forth in Commission Exhibit 200 "Composite Service Lives."

The relation of the net return for each year to the average annual value of plant and property for the same year produces the per cent return shown on line 8 for each year, in Statements Nos. 1 and 2.

(Vol. 85, pp. 12,840-12,852.)

Present Value Plant, Overheads, Working Capital and Going Concern Value, December 31, 1940

	All Sales	Total Sales For Resale	Sales for Resale Cheyenne, Wyoming
Plant and Investment	$1,762,450	$1,667,045	$641,968
Actual Accrued Depreciation	135,246	119,926	52,005
	$1,627,204	$1,547,119	$589,963
Working Capital	45,490	43,028	16,657
Going Concern Value	175,000	165,690	63,813
Total, 12/31/40	$1,847,694	$1,755,837	$670,433
Additions, 1941	37,477	37,118	10,988
Total, 12/31/40	$1,885,171	$1,792,955	$681,421
Net Return, 1940	$ 115,919	$ 75,305	$ 23,480

(Ex. 245, 248, St. No. 3.)

The *per cent* annual return reflected by the exhibit for each of the years is:

	All Sales	Sales for Resale	Sales for Resale, Cheyenne
1940	6.34	4.33	3.52
1941	5.46	3.51	2.78
1942	6.29	4.40	3.46
1943	6.17	4.42	3.46
1944	5.84	3.97	2.90
1945	4.85	2.98	1.97

(Ex. 248, Statement No. 1, Appendix.)

1940	7.63	5.69	4.55
1941	6.14	4.22	3.31
1942	5.50	3.56	2.83
1943	5.38	3.58	2.83
1944	5.20	3.30	2.39
1945	4.56	2.67	1.74

(Ex. 248, Statement No. 2, Appendix.)

By Mr. Lange:

Q. Now, turning to your Exhibit 248, Mr. Willard, what is the purpose of this exhibit?

A. The purpose of this exhibit is to bring together data submitted on previous exhibits and from that data to calculate a return on the three classifications of property as shown on sheets 1 and 2 of the calculations, the first calculation being all sales, the second being total sales for resale and the third being sales for resale at Cheyenne.

Q. Now, I note on the first schedule, the main one of the exhibit, you have a return computation that for the year 1940 *employes* the figure of plant value of $1,808,448.00, is that right?

A. Yes, sir. That is at the beginning of the year 1940.

Q. The breakdown of that at the end of the exhibit, which breakdown is labeled "Apportionment of Going Concern Value"—

A. This breakdown includes an apportionment of going concern value.

Q. And statement of present value, I see.

A. Yes, sir, and it shows the method of arriving at

values at the beginning and at the end of different years by deduction of actual plant additions during the various years.

Q. I notice that on that statement in the exhibit, Exhibit 248, the item of going concern value is brought into the accounting picture, or rather into your exhibits for the first time.

A. That is correct.

Q. Now, then, this first table or schedule in your exhibit in employing that figure of $1,808,448.00 in the column under 1940, then, also brings that down to the end of the year. How do you arrive at that? You submit a figure of $1,847,694.00.

A. That second figure you mention is indicated as the present value at the end of the year and the calculation to arrive at that figure is shown under the column entitled "All Sales" on the third sheet of the exhibit.

Q. I see. That is where that comes from.

Now your Net to Reserves and Return, the figure of $154,739.00, I understand that is taken from your Exhibit 245.

A. Yes, revised Exhibit 115, which is a part of Exhibit 245.

Q. That is, revised Exhibit 115 embraced in Exhibit 245?

A. That is correct.

Mr. McCreery: It isn't the same figure, however.

Mr. Lange: But the figure of $154,739.00 is the same as appearing in revised Exhibit 115 for 1940. I was just wanting to tie these in.

The Witness: That's correct.

By Mr. Lange:

Q. Now, the next item that you have under all sales is described by you as Depreciation Reserve. Don't you mean depreciation expense? That is what it really is.

A. I mean it is the annual allowance for depreciation as would be allowed in a case of this nature.

Q. What do you mean by a case of this nature, Mr. Willard, as distinguished from any other use of the term?

A. Well, in order to arrive at an amount applicable to

net return the annual allowance for reserves must be deducted from your return as an expense and that is the amount that has been calculated in this exhibit.

Q. Well, just getting it in its simplest language, it is an expense item.

A. That is correct.

Q. And where was that taken from, the $38,820.00?

A. That is a calculation that we have made and I have the working papers for and it was arrived at by applying the percentages that were obtained from Commission's Exhibit 202 to the depreciable property in our own Exhibits in the similar classifications.

Q. Don't you mean Commission's Exhibit 201, Mr. Willard?

Mr. McCreery: No. 200 was Mr. Copp's Exhibit on service lives.

Mr. Lange: 201 is Mr. Smith's Exhibit.

Mr. McCreery: 200 was Mr. Copp's exhibit.

Mr. Lange: But Mr. Willard stated that he utilized Exhibit No. 202 and I was wondering whether he was in error.

The Witness: That 202 is an error. Whether it is a typographical error or my error I don't know. Those percentages are found in Exhibit 200.

Mr. Lange: Mr. Copp's Exhibit on service lives.

The Witness: That is correct.

By Mr. Lange:

Q. Do you have that exhibit there before you, Mr. Willard?

A. Yes, sir.

Q. Does that appear on the last page?

A. Yes, that appears on the last page of his exhibit by different classifications of property.

Q. The percentages that you used under the column "Annual Straight Line Rate, blank Percentage" is that where you utilize your figures?

A. Yes.

Q. The last column?

A. The last column, the percentages shown in the last column.

Q. That I have just read.

A. Yes.

Q. In other words, that is the column headed "Annual Straight Line Rates, Percent," and then it has these percentages set forth in that column.

A. That is correct.

Q. Exhibit 200.

A. Yes, sir.

Q. And you have made the computations from that in order to arrive at the depreciation reserve figure as you term it for each of the years 1940 through 1945 in this tabulation in Exhibit 248.

A. Yes, sir. That line entitled "Depreciation Reserve" I think probably could be more correctly termed annual reserve accrual.

Q. Well, it could in the same fashion be entitled annual depreciation expense, too, couldn't it? It is an expense item. There is no question about that.

A. That is correct.

Q. And in utilizing the rates as set forth in the Commission's Exhibit No. 200, you then for each of the years 1940 through 1945 computed that annual charge on a straight line basis.

A. I have computed it according to the percentages, yes.

Q. And then you compute what you term the net return for each of the years and also what you compute as a percentage for each of the years.

A. Yes, sir, that percentage is obtained by relating net return to the average investment for the several years.

Q. Now, under the column of 1941, as you state, average investment at the end of the year is $1,885,171.00, isn't it?

A. Yes, sir.

Q. I see that you then take that figure as the investment for each of the following years through 1945. There is no change made in that, both at the beginning as well as at the end of each of those years.

A. For the purposes of this case we have calculated the expenditures contemplated through the year of 1941; that is, the major expenditures and—

Mr. McCreery: You mean capital expenditure.

The Witness: Yes, sir, and in all exhibits that project

beyond 1941 the same figure for investment as at the end of 1941 has been used for the succeeding years.

Q. And you are not making provision there for depreciating that investment over that period of years?

A. Well, no, that to begin with is the depreciated investment as reflected in Exhibit 111, or revised Exhibit 111 and hasn't been further depreciated.

Q. When you speak of the depreciated investment, plant investment, as set forth in Exhibit 111, you mean of course calculations appearing in statement 2 of the exhibit and depreciation there as the term is used by you is the application of Mr. Hancock's percent condition to the various units of property.

A. That is correct, and I have no basis on which to calculate a different percent condition for the ensuing years.

Q. And those figures of Mr. Hancock that are utilized in statement 2 of Exhibit 111, there the percent condition of the various units of property are calculated. That percent condition was arrived at by him—when was it, the middle of the year 1939, wasn't it?

A. Partially. He made observations in September or October of 1939 on the main and branch lines. He made observations in the late fall of 1940 on the remainder of the property.

Q. So the percent condition as applied to plant and investment and as set forth in the revised statement No. 2, Exhibit 111, and embraced in Exhibit 245, is the same as that found by Mr. Hancock and which is carried forward in your Exhibit 248.

A. That is correct.

Q. For each of the years as set forth in that schedule 1 of Exhibit 248.

A. Yes, sir.

Q. Well, then, during this entire period from the middle of 1939 and at least from that part of the year in 1940 when Mr. Hancock made his last inspection, down through 1945, so far as this schedule on Exhibit 248 is concerned, there is no depreciation accruing in those properties.

A. No, I wouldn't say that. Those are figures tabulated for the purposes of showing annually the net based on what data was available. It was impossible to determine any observed depreciation for the years of 1942, 1943, 1944 and

1945, mainly because they aren't here yet and even if they were and observations had not been made, we could not have determined an amount of depreciation.

Q. You say for the years 1942 to 1945, but that same difficulty is also applicable to the year 1941 as well as all of those inspections that were made during the year 1939 and not in 1940.

A. The observations of Mr. Hancock in the fall of 1939 and the fall of 1940 are reflected through the several years through here.

Q. Without change?

A. Without change.

Q. Now, on the other hand, in your calculations as set up on this schedule 1 of Exhibit 248, you do deduct annually *deduct* this amount that you have set up indicated as depreciation reserve or expense or annual depreciation accrual each year?

A. That is correct. That is based on a percent of the undepreciated figures in the various accounts.

Q. Well, exactly how do you arrive at the calculation? You take these figures setting up the percentages in the Exhibit 200, and then apply them to the several accounts?

A. That's right.

Q. You recall the method of treatment of depreciation in Exhibit 201, don't you—Commission's Exhibit 201, presented by Mr. Smith in this proceeding, entitled "Annual and Accrued Depreciation"?

A. Yes, I believe I recall that.

Q. Did you proceed in the same fashion in arriving at your figures under the columns for each of the years in the Exhibit 248 that you have indicated as depreciation reserve?

A. I believe so.

Q. But you took the percentages from Mr. Copp's Exhibit 200 and applied them in the same fashion, or rather utilizing the same mechanics as Mr. Smith did in his exhibit, Exhibit 201?

A. That is correct, for the derivation of the figure but not for the ultimate use of the figure as Mr. Smith used it.

Mr. McCreery: For the purpose of annual accruals only.

The Witness: For the purpose of annual accruals only.

By Mr. Lange:

Q. Not for any other purpose?

A. No, sir. I don't believe there is any purpose that they can actually be used for—

Mr. McCreery: That is reflected in the statement, Mr. Lange.

By Mr. Lange:

Q. But you do say they serve the purpose very well for these annual accruals as you set them up here?

A. I believe it is an accepted method for annual accruals.

Q. Why do you propose to accept—why do you limit them to that particular use only?

A. For the reason that I am only trying to find out an amount of money that should be deducted as an expense to find that return.

Q. Any way—in other words, you are just attempting to arrive at this net return figure in this exhibit, and did not give very much consideration to the method or the bases on which you arrived at that net return?

Mr. McCreery: May I ask a question there?

Mr. Lange: Yes.

Mr. McCreery: You didn't understand that these annual accruals had anything whatever to do with the actual physical condition of the property?

The Witness: They have nothing whatsoever to do with the actual physical condition of the property.

By Mr. Lange:

Q. But you have utilized these figures and have employed the same mechanics as Commission examiners in order to arrive at what you term net return as well as net return percentage in your Exhibit 248, didn't you, Mr. Willard?

A. Yes, sir, I deucted those as an expense from which the percent of return was calculated.

Q. And you of course don't know anything about the physical condition of the various units of property of the company during the years 1941 through 1945, do you?

A. Actually, no. These columns are put here for the purpose of observation of the Commission for what use they may be.

Q. The bases are all right if used for one purpose but you don't sponsor them for any other purpose.

A. They are proper for the purpose of deducting as an expense to arrive at net return. I will concede that I do not guarantee that the depreciated value of the property in 1942 and on up to 1945 will be the figures as reflected here for the simple reason that observations would have to be made during those periods and the amount of observed depreciation calculated at that time.

Q. Well, for 1941 you overlooked 1941. You haven't seen the property then, have you?

A. During a small part of 1941, yes.

Q. But even if you had looked at it during 1941 or the latter part of 1940 and made your own observations that wouldn't have governed any of these figures anyway because you employed Mr. Hancock's—so in so far as 1941 is concerned, you don't know whether they are actual or not.

A. That is correct.

Q. You didn't relate anything that you may have seen during 1941 to this column?

A. No, sir.

Q. Nor 1940 that you may have seen in 1940 after Mr. Hancock had made his inspection?

A. Part of the depreciation shown in Exhibit 111 was from my observations in the fall of 1940.

Q. There is no figure that was subsequent to what Mr. Hancock put in, was there?

A. No, sir.

Q. You didn't make any inspection, did you, of the pipe?

A. No, sir.

Mr. McCreery: It seems to me that this is going far afield. The record shows who did it and when it was done.

Mr. Lange: No, he was limiting what he termed quantities for the years 1942 through 1945, and that situation obtains for 1941 and also part of 1940, and I just want to show that definitely.

The Trial Examiner: You have completed that phase Mr. Lange?

Mr. Lange: Yes.

The Witness: You are correct in that statement, Mr. Lange.

Mr. Lange: Now, do you want to make this correction? Shall we make the correction in the written statement or does the record reflect that with reference to Exhibit 202, that is in the written statement?

The Witness: I think it should be corrected.

Mr. McCreery: May the record be corrected accordingly, Mr. Examiner?

The Trial Examiner: Yes.

(Vol. 85, pp. 12839-12852.)

* * * * *

(b) "*Rate of Return*" (Commission Ex. 202, Statement B-7.)

Commission witness SMITH, as a part of his exhibit on "Income Accounts" (Ex. 202, p. 10), computes as "Rate of Return" for the years 1926 to 1939, inclusive. As set forth for the year 1939 it is, as follows:

Line No.	Particulars	1939
1	Average balance of gas plant in service, as adjusted	$1,664,538.28
2	Less, average balance in reserve for depreciation of gas plant in service, as adjusted	374,904.19
3	Net average investment in gas plant in service as adjusted	$1,289,634.09
4	Working capital requirements (Note 1)	16,234.59
5	Subtotal	$1,305,868.68
6	Less, average balance in contributions in aid of construction, as adjusted	12,092.94
7	Total average investment	$1,293,775.74
8	Utility income (Statement B-6, line 11)	$ 167,902.75
9	Rate of Return	12.98%

(Ex. 202, p. 10, Col. 1 and 3.)

The reason stated by the witness for the inclusion of "Rate of Return" from the beginning of the Company operations in 1926, was:

> "A. Primarily, of course, for information purposes, and to go on with that, the reason I thought that information might be of use was because we had found it necessary to restate the depreciation; we therefore had applied several adjustments to the company's per book figures, the most significant of which is, of course, depreciation with reference to those earlier years and then it seemed to me that Statement B-7 which tabulates the return which the company had earned as therein computed, might be of value from an information standpoint in these proceedings."
>
> (Vol. 67, p. 9739.)

The inclusion of prior years was made pursuant to direction of the Commission. (Vol. 67, p. 9742.)

None of the entries (lines 1 to 9, inclusive,) reflect the books of the Company. (Vol. 67, pp. 9728-9736.)

Line 1, "Average balance of gas plant in service, as adjusted," reflects as deductions from Plant Account all the adjusting and eliminating entries made in Commission Exhibits 199 and 201. (Vol. 67, pp. 9730, 9685-9698.)

Witness testified:

> "For each of these years the sum of one-half of the total of gas plant in service at the beginning and at the end of the year, as adjusted, is considered as the average balance of gas plant in service during the year."
>
> (Vol. 67, p. 9735.)

Line 2, "Less average balance in reserve for depreciation of gas plant in service, as adjusted" is computed from "Annual and Accrued Depreciation of Gas Plant as adjusted," by the witness (Ex. 201), which in turn is an accountant's application of "Composite Service Lives" (Ex. 200) on a straight line basis. (Vol. 67, pp. 9730, 9686-9698.)

Line 3, "Net average investment in gas plant in service,

as adjusted" is the result of the substraction of line 2 from line 1.

Line 4, "Working capital requirements" is the amount thereof as set forth in Commission Exhibit 203.

Line 5, is the sub-total, resulting from the foregoing lines 1 to 4.

Line 6, "Less average balance in contributions in aid of construction, as adjusted" is the total "Contributions in Aid of Construction—as adjusted," averaged in the same manner as in line 1. The "Contribution" payments were made by Colorado Interstate Gas Company, Kuner-Empson Company, Public Service Company, Lutheran Sanitarium and International Metal Foundation. (Ex. 204, Schedule A-15, p. 8.)

The witness was asked, on cross-examination, to explain his reasons for eliminating the item, "Contributions in Aid of Construction." On this point, the testimony is as follows:

"Q. Well, you had to reach some conclusions when you struck it out. Now, I asked you why you struck it out. Is that the reason, or have you another reason?

"A. Because it was not an investment by the company. I am dealing with investment here from the company's point of view.

"Q. I thought you were dealing in this exhibit with a property account.

"A. Well, that is investment, isn't it?

"Q. Apparently the property account and the investment that you arrive at are different in this one respect at least.

"A. Well, I measured the investment here by the assets of the company and I am diminishing those assets by the amount included in there in which the company did not contribute."

(Vol. 67, p. 9807.)

All the items of contribution, which total $12,092.94 for 1939, represent assets now used or useful in the operations of the Company. (Vol. 67, p. 9805, Ex. 287.)

On *Line 7*, is shown "Total Average Investment" finally arrived at by subtracting line 6 from line 5.

The witness SMITH made correction of "Total Average Investment" for the year 1939 by addition to the total figure of $1,293,775.74 (L. 7, Col. 3, Statement B-7) the amount of $2,982.14, making the total as re-computed by him, $1,296,657.88; and for the year 1938 by the addition of $1,491.07, making his total re-computation $1,337,354.90 (Vol. 67, pp. 9803, 9804).

Line 8, "Utility income," as computed by the witness, is shown for the year 1939 as $167,902.75.

This figure does not reflect the books of the Company. The witness testified "The Income Account was adjusted to make it more nearly reflect the legitimate operating income of the Company from gas operations." (Vol. 67, p. 9729.)

In his adjustments for the year 1939, he eliminates from "Operating Revenue Deductions" as per books, and adds to Operating Income of the Company $16,860.52 (L. 3, Col. 4, Statement B-1, Ex. 202). The items making this total are detailed in Statement B-10, Ex. 202 (elsewhere herein abstracted) and include "Rate Case Expenses" $14,079.16, which the witness treats "Just as though it had not been spent." (Vol. 67, p. 9744.)

(Vol. 67, pp. 9743, 9790.)

In his adjustments of "Depreciation" he reverses the Company's entry and substitutes therefor a 2% annual accrual based on Commission Exhibits 200 and 201—resulting in a debit of $9,965.67. (L. 5, Col. 3 and 4, Statement B-1.)

Taxes are also adjusted by him to reflect a net debit of $616.76. (L. 6, 7, 8, Col. 3 and 4, Statement B-1.)

The "Utility income" is computed by the witness at $167,902.75 for the year 1939. As shown on the Company books, the same items show $161,624.66 for that year. (L. 10, Col. 2 and 5, Statement B-1.) The figure $167,902.75 is adopted in his "Rate of Return" computation. (L. 8, Col. 3, Statement B-7.)

Ex. 202 and the testimony supporting it is set forth supra.

[Exhibits appear in Volume III of this Record.]

And thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Tenth Circuit:

Order of Submission.

Sixth Day, September Term, Tuesday, September 14th, A. D. 1943. Before Honorable Sam G. Bratton, Honorable Walter A. Huxman and Honorable Alfred P. Murrah, Circuit Judges.

These causes came on to be heard, Elmer L. Brock, Esquire, and E. R. Campbell, Esquire, appearing for Colorado Interstate Gas Company; John P. Akolt, Esquire, and Charles H. Keffer, Esquire, appearing for Canadian River Gas Company; Donald C. McCreery, Esquire, appearing for Colorado-Wyoming Gas Company; Edward H. Lange, Esquire, appearing for Federal Power Commission; Thomas H. Gibson, Esquire, appearing for City and County of Denver.

Thereupon argument was commenced by counsel and continued to the hour of adjournment.

Order of Submission.

Seventh Day, September Term, Wednesday, September 15th, A. D. 1943. Before Honorable Sam G. Bratton, Honorable Walter A. Huxman and Honorable Alfred P. Murrah, Circuit Judges.

These causes came on further to be heard, Elmer L. Brock, Esquire, and E. R. Campbell, Esquire, appearing for Colorado Interstate Gas Company; John P. Akolt, Esquire, and Charles H. Keffer, Esquire, appearing for Canadian River Gas Company; Donald C. McCreery, Esquire, appearing for Colorado-Wyoming Gas Company; Edward H. Lange, Esquire, appearing for Federal Power Commission; Thomas H. Gibson, Esquire, appearing for City and County of Denver.

Thereupon argument by counsel was concluded and the causes were submitted to the court.

Opinion.

[May 16, 1944.]

Elmer L. Brock and E. R. Campbell (Wm. A. Dougherty and C. W. Cooper were with them on the brief) for Petitioner, Colorado Interstate Gas Company.

John P. Akolt and Charles H. Keffer (P. C. Spencer was with them on the brief) for Petitioner, Canadian River Gas Company.

Donald C. McCreery (Lee, Shaw and McCreery, and Wm. A. Bryans, III, were with him on the brief) for Petitioner, Colorado-Wyoming Gas Company.

Edward H. Lange (Charles V. Shannon, L. W. McKernan, and Milford Springer were with him on the brief) for Respondent, Federal Power Commission.

Thomas H. Gibson (Malcolm Lindsey was with him on the brief) for Respondent, City and County of Denver, Colorado.

Before BRATTON, HUXMAN and MURRAH, Circuit Judges.

BRATTON, Circuit Judge:

These cases bring here for review orders of the Federal Power Commission requiring Canadian River Gas Company, Colorado Interstate Gas Company, and Colorado-Wyoming Gas Company to make reductions in their respective rates for natural gas transported in interstate commerce and sold for resale for ultimate public consumption. Reference will be made to the companies as Canadian, Colorado, and Wyoming, respectively.

The City and County of Denver filed with the Commission a complaint charging that the rates of Canadian, Colorado, and Public Service Company were unjust and unreasonable; similarly, the Public Service Commission of the State of Wyoming filed with the Commission a complaint charging that the rates of Wyoming were unjust and unreasonable; and the Commission instituted on its own motion an investigation into the reasonableness of the rates of Canadian, Colorado, and Wyoming. Canadian and Colorado filed with the Commission their joint application for

a stay of the order directing that the investigation be instituted; the Commission denied the application; the companies sought review; and it was denied on the ground that the order was merely preliminary and procedural and therefore not open to review. Canadian River Gas Co. v. Federal Power Commission, 110 F. (2d) 350, 113 F. (2d) 1010, certiorari denied, 311 U. S. 693. By order of the Commission, the three proceedings were consolidated for purposes of hearing. At the conclusion of extended hearings; the Commission found that the revenues and costs of the companies for 1939 were fairly representative of the relationship which would exist between such items in the immediate future, and that use of the figures for that year resolved most of the doubts as to future operation conditions in favor of the companies. Using the figures for 1939, the Commission determined that the rates and charges of Canadian for gas sold to Colorado and Clayton Gas Company were unjust and unreasonable to the extent of $561,000 annually; that the rates and charges of Colorado were unjust and unreasonable in the amount of $2,065,000 annually; and that those of Wyoming were unjust and unreasonable in the sum of $119,000. The Commission ordered the companies to reduce their rates and charges by not less than such amounts, respectively, and directed that schedules of rates be filed effecting such reductions. The companies applied for a rehearing; the Commission denied the applications; and the companies severally sought review.

Southwestern Development Company, through its wholly owned subsidiary, Amarillo Oil Company, owned gas leaseholds in more than 315,000 acres of land in the Texas Panhandle Field; Cities Service Company, through its wholly owned subsidiary, Public Service Company, at Denver, Colorado, and its wholly owned subsidiary, Pueblo Gas and Fuel Company, at Pueblo, Colorado, controlled the resale market for gas in the two cities, but did not have an adequate supply of natural gas or pipeline facilities for the transportation of natural gas to such cities. After extended negotiations, Southwestern, Cities Service, and Standard Oil Company of New Jersey, entered into an agreement denominated "Memorandum of Stipulations", and dated April 5, 1927. The primary objectives of the contracting parties, as expressed in the agreement, were

the acquisition of natural gas properties in the gas field, the construction of a pipeline from the field to the City of Denver via Pueblo and Colorado Springs, the sale and delivery of natural gas at the city gate of Denver and other cities for distribution in such cities, and the supplying of natural gas to Colorado Fuel and Iron Corporation at Pueblo. Under the terms of the contract, Southwestern was to cause to be transferred to a new wholly owned subsidiary the leaseholds and gas producing properties, and to develop such properties into a source of supply of natural gas; Standard was to cause a corporation to be formed which would construct and maintain a natural gas pipeline and appurtenant facilities for the transmission and sale of gas; and Cities Service, through its subsidiaries, was to obtain franchises and rate ordinances in Denver and Pueblo, respectively, for the sale of natural gas, and convert the artificial gas distribution plants then in use in such cities into natural gas distribution plants. The newly formed subsidiary of Southwestern was to sell at cost gas to the pipeline company; and, with provisions for revision which need not be detailed, the pipeline company was to sell and make delivery at the city gate at the rate of forty cents per thousand cubic feet. The producing company and the pipeline company, and the pipeline company and the distributing companies, were to enter into contracts carrying out the commitments made in the Memorandum of Stipulations; and such contracts were to be for a term of twenty years from and after the execution of the first thereof, and as long thereafter as natural gas might be profitably sold by the pipeline company. The contract further provided that in case an acceptable rate ordinance was not secured in the City of Denver, on or before July 1, 1927, the parties thereto, or any of them, might terminate participation therein, and each thereupon be free to act as though such stipulations and any agreements thereunder had never been made.

Franchises and rate ordinances were obtained in Denver and Pueblo; Canadian was incorporated as the subsidiary of Southwestern; and Standard caused Colorado to come into existence. Canadian and Colorado, Colorado and Public Service Company, and Colorado and Pueblo Gas and Fuel Company, respectively, entered into contracts as pro-

vided in the Memorandum of Stipulations; and by contractual arrangements, Colorado obligated itself to sell natural gas to the City of Colorado Springs for distribution by the city in its municipally owned distribution system and for sale to industrial and commercial consumers. Southwestern caused Amarillo Oil Company to convey the leases to Canadian. Canadian paid Amarillo Oil Company the sum of $5,000,000 for the leases and the then producing wells. Southwestern and Standard had agreed upon that amount, and it was paid with funds furnished by Standard. Canadian was financed through the issuance of bonds in the amount of $11,000,000, all of which were purchased by Colorado with funds furnished by Standard. Colorado issued 1,250,000 shares of common stock without par value, of which forty-two and one-half per cent was issued to Southwestern, forty-two and one-half per cent to Standard, and fifteen per cent to Cities Service; and it issued preferred stock valued at $2,000,000, one-half to Standard and one-half to Southwestern. Standard paid Colorado $1,000,000 in cash for the common stock issued to it and a like sum for its preferred stock. No cash consideration was paid for the stock issued to Southwestern or Cities Service. Colorado issued bonds in the amount of $19,200,000. These were sold to Standard for cash at par, and the proceeds, along with the cash which Standard paid for the stock issued by Colorado, aggregating $21,200,000, was used to finance the project. Canadian developed the leaseholds, and constructed a main transmission pipeline from the field to Clayton Junction in New Mexico, a distance of approximately 86 miles; and Colorado constructed a main transmission line from Clayton Junction to the city gate at Denver, a distance approximating 254 miles, three compressors, and various laterals extending from the main line to customers of the company, including a lateral to the plant of Colorado Fuel and Iron Corporation. On December 31, 1939, Canadian had in operation a total of 94 gas wells; and its gathering system consists of about 144 miles of pipe, and has two terminals. One terminal is located at the Bivins Station where the gas there gathered is compressed and then transmitted through the transmission line to Clayton Junction where virtually all of it is sold to Colorado but a small amount is sold to Clayton Gas Company.

The other terminal is located at Fritch Station where the gas there gathered is compressed and then transported through the facilities of Texoma Natural Gas Company to Gray Junction, in Oklahoma, where it is sold to Colorado. Colorado sells that gas to Natural Gas Pipeline Company, and it moves to its destination, known as the Chicago market.

The facilities of Wyoming consist of a main transmission pipe line extending from a point near Littleton, Colorado, to the city gate at Cheyenne, Wyoming, compressor stations, and a number of laterals extending from the main line to city gates and industrial plants in Colorado and Wyoming. From the inception of the project until the latter part of 1929, the company obtained its entire supply of natural gas from the Wellington Field in Colorado. But early in 1929, the supply from that field began diminishing rapidly; it became essential that the company secure another source in order to continue in business; in October of that year, it entered into a contract with Colorado for the purchase of gas from that company with which to supply its customers in the States of Colorado and Wyoming; and ever since Colorado has sold gas to Wyoming, deliveries being made at the point adjacent to Littleton.

In 1939, Canadian sold for resale approximately 46,000,000 Mcf of gas, of which about 41,000,000 Mcf were sold to Colorado; Colorado sold about 20,000,000 Mcf of such gas to Natural Gas Pipeline Company, about 7,000,000 Mcf to Colorado Fuel and Iron Corporation, and about 6,000,000 Mcf to Public Service Company; and Wyoming transported and sold 2,860,000 Mcf, some to affiliates for resale through distribution systems in towns and communities in Colorado and Wyoming, some to other companies for like distribution, some to industrial consumers, and some to United States Army posts.

The Motions to Dismiss—The City and County of Denver filed separate motions to dismiss the petitions for review of Canadian and Colorado, and Public Service Commission of Wyoming filed a like motion to dismiss the petition for review of Wyoming. We denied the motions, but thereafter the City and County filed a brief, and later its counsel participated in the oral argument, renewing the con-

tention that the petitions should be dismissed for want of jurisdiction. The grounds of each motion are that it appears from the face of the petition for review that the petitioning company is a private corporation organized and existing under the laws of Delaware; that the petition fails to allege that the company is located in this circuit; and that it affirmatively appears from the face of the petition, the face of the record, the testimony of the company's own witnesses, and facts dehors the record that the company is not located and does not have its principal place of business in this circuit. These companies were incorporated under the laws of Delaware, and therefore their legal residence and domicile is in that state. Shaw v. Quincy Mining Co., 145 U. S. 444; Southern Pacific Co. v. Denton, 146 U. S. 202; Home Powder Co. v. Geis, 204 F. 568; Continental Coal Corp. v. Roszelle Bros., 242 F. 243; Dryden v. Ranger Refining & Pipe Line Co., 280 F. 257, certiorari denied, 260 U. S. 726; In re Hudson River Navigation Corp., 59 F. (2d) 971.

But section 19(b) of the National Gas Act, 52 Stat. 821; 15 U.S.C.A. § 717r(b), provides that any party to a proceeding under the act who is aggrieved by an order of the Commission made in the proceeding may obtain a review of the order in the Circuit Court of Appeals of any circuit in which the natural gas company to which the order relates is located or has its principal place of business, or in the Court of Appeals of the District of Columbia, by filing in such court within the time specified a petition in writing praying that the order be modified or set aside in whole or in part. It is to be noted that the statute provides in clear language that review may be had either in the circuit where the company is located or in the circuit where its principal place of business is located, the pivotal language being stated in the disjunctive. It is commonplace for a corporation chartered in one state to conduct much or all of its business in another state far distant from that of incorporation. No doubt mature considerations of convenience gave rise to the deliberate care with which Congress, in the exercise of its discretion, authorized review in the circuit within which the principal business of the company is conducted. And the principal place of business is where

the actual business of the corporation is conducted or transacted. It is a question of fact to be determined in each particular case by taking into consideration such factors as the character of the corporation, its purposes, the kind of business in which it is engaged, and the situs of its operations. Cf. In re Guanacevi Tunnel Co., 201 F. 316; In re Hudson River Navigation Corp., supra; Chicago Bank of Commerce v. Carter, 61 F. (2d) 986.

Section 5, chapter 65, Revised Code of Delaware, provides that the certificate of incorporation shall set forth the name of the county, and the city, town, or place within the county, in which the principal office or place of business of the corporation is located in that state; and section 32 provides that every corporation shall maintain a principal office or place of business in the state. Here, in each instance, the certificate of incorporation states the location of the principal office of the company in Delaware, but it is completely silent in respect of the place of business. All of the physical properties and business operations of Colorado and Wyoming are located and conducted within this circuit. Wyoming maintains offices in Denver where its executive officers and agents supervise and administer its properties and operations. Canadian transports almost ninety per cent of the natural gas which it produces into this circuit, part into New Mexico and part into Oklahoma, where virtually all of it is sold to Colorado. The properties of Canadian and Colorado are operated as a unit. The two companies have a single general manager and jointly maintain an office in Colorado Springs, under the charge of such manager, where the supervision, direction, and management of the affairs of both companies are conducted. There are approximately thirty-six employees in the office, some devote their entire time to the business of Colorado and are paid by that company, some divide their time between the business of the two companies, and their salaries are paid partly by each company. The general manager is in charge of all operations of Canadian, including the gas fields and a field operating office in Texas; the chief dispatcher, who keeps in constant touch with the expected demands for gas and gives orders for the amount of gas to be piped, has his office in Colorado

Springs and is under the supervision of the general manager. The principal books of account are kept in Colorado Springs, under the direction of the assistant treasurer of the company who maintains his office there. All major purchases for both companies are made and all bills for materials purchased are paid by vouchers issued out of the office there; all dealings between the two companies in connection with the purchase and sale of gas are conducted in and through the office there; and the principal bank account of Canadian is kept in banks in that city. We think it is clear that the principal place of business of each company is in this circuit, within the meaning of the statute. Continental Coal Corp. v. Roszelle Bros., supra; Dryden v. Ranger Refining & Pipe-Line Co., supra; In re Lone Star Shipbuilding Co., 6 F. (2d) 192. And we therefore adhere to the view that the motions to dismiss are illfounded.

Jurisdiction of Production and Gathering Properties—Canadian attacks the order relating to the reduction in its rates and charges on the ground that the Commission erroneously undertook to exercise unauthorized rate-regulatory jurisdiction over the production and gathering properties, facilities and business of the company. Section 1(a) of the Act, supra, declares "that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation . . . relating to the transportation of natural gas and the sale thereof in interstate . . . commerce is necessary in the public interest". Section 1(b) limits the act in its application "to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale", and further provides in express terms that it "shall not apply . . . to the production or gathering of natural gas." Section 2(6) provides that a natural gas company is a company engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale. Section 4(a) declares that rates and charges in connection with the transportation of natural gas subject to the jurisdiction of the Com-

mission "shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful". Section 5(a) directs the Commission to "determine the just and reasonable rate . . . and shall fix the same by order". Section 6(a) empowers the Commission to "investigate and ascertain the actual legitimate cost of the property of every natural-gas company, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property". Section 7 vests in the Commission certain powers relating to the improvement, establishment of physical connections, abandonment, construction, or extension of transportation facilities of natural gas companies. Section 8 enables the Commission to require natural gas companies to keep and maintain accounts and records. Section 9 charts the authority of the Commission in relation to rates of depreciation and amortization of the several classes of property of natural gas companies. Section 10 concerns the filing with the Commission of periodic and special reports. Section 11 is addressed to the duties of the Commission respecting state compacts dealing with the conservation, production, transportation, or distribution of natural gas. And section 14(a) authorizes the Commission to "investigate any facts, conditions, practices or matters which it may find necessary or proper to determine whether any person has violated or is about to violate any provision of this Act." The primary legislative purpose in the passage of the Act was to provide comprehensive regulation of the wholesale distribution to public service companies of natural gas moving interstate, and to vest in the Commission as the instrumentality of Congress power to exercise such regulation. Illinois Natural Gas Co. v. Central Illinois Public Service Co., 314 U. S. 498; Public Utilities Commission v. United Fuel Gas Co., 317 U. S. 456. And the grant of powers expressly conferred upon the Commission carried with it by implication all authority reasonably necessary and fairly appropriate to make such powers fully efficacious, and to render effectual the discharge of the duties of the Commission. But, under section 1(b) the Commission does not have express or implied rate-regulatory jurisdiction of the production and gathering of gas.

Canadian is engaged in the business of producing, gathering, transporting and selling interstate natural gas for resale for ultimate public consumption. It therefore is a natural gas company, subject to the jurisdiction of the Commission in respect to its rates and charges for the gas transported and sold in such commerce. Its production and gathering properties and facilities are parts of its integrated operations. Still, under section 1 of the Act they lie beyond the range of the rate-regulatory jurisdiction of the Commission. But the Commission did not prescribe charges for the production; did not fix rates for the gathering of gas; and did not exercise other rate-regulatory jurisdiction over production or gathering as such, within the meaning of the limiting and forbidding provisions of the Act. The Commission did not attempt to affect in any manner the acquiring and maintaining of gas leaseholds, gas rights, or gas wells. Neither did it undertake to affect anywise the location, construction, extension, or physical connections of pipelines, or the operation of pipelines or other facilities constituting the gathering properties. The rate-regulatory jurisdiction of the Commission was exerted only in respect of rates and charges for natural gas transported in interstate commerce and sold in such commerce for resale for ultimate public consumption. The Commission inquired into and considered the production and gathering properties in respect to cost, depreciation, operating expenses, and revenues. But the inquiry was merely in their relation to the fixing of reasonable rates to be exacted and received for the natural gas moved in interstate commerce and sold for resale. And the order of the Commission in each instance operated only upon such rates and charges. We fail to find in the act anything which expressly or by fair implication indicates a Congressional purpose to restrict or withhold from the Commission jurisdiction in a case of this kind to take into consideration the production and gathering properties only as they have bearing upon the question of the fixing of reasonable rates for gas moved interstate and sold for public consumption.

Abrogation of Prices Fixed by Contract Prior to Effective Date of the Act—While not challenging the constitutional validity of the Act on its face, or as it may be applied in general, Canadian and Colorado advance

the contention that here the Commission erred in applying it retrospectively in such manner as to abrogate prices agreed upon in contracts of limited term entered into and substantially performed prior to the enactment of the Act, at a time when neither company was in fact or in law a utility or common carrier, and when each disclaimed all of the privileges and obligations as such. The contracts between Canadian and Colorado, Colorado and Public Service Company, Colorado and Pueblo Gas and Fuel Company, Colorado and the City of Colorado Springs, and Colorado and Wyoming, respectively, were each executed prior to the date on which the act became effective; they were of limited term; and they had been performed in substantial part at the time the Act went into effect. But at all times, the transportation and sale of natural gas in interstate commerce for wholesale distribution to public service companies or municipalities for resale to domestic consumers was subject to regulation by Congress. Missouri v. Kansas Gas Co., 265 U. S. 298; Illinois Natural Gas Co. v. Central Illinois Public Service Co., supra; Federal Power Commission v. Natural Gas Pipeline Co., 315 U. S. 575; Public Utilities Commission v. United Fuel Gas Co., supra. And the exertion of the power of Congress in its regulation of interstate commerce is not fettered by pre-existing contracts or arrangements. The exercise of power under the Commerce Clause cannot be subordinated to arrangements or stipulations previously effected. Contracts and arrangements of that kind necessarily are entered into with knowledge of the paramount authority of Congress to regulate commerce among the states. Union Bridge Co. v. United States, 204 U. S. 364; Monongahela Bridge v. United States, 216 U. S. 177; Philadelphia Co. v. Stimson, 223 U. S. 605; Philadelphia, Baltimore and Washington Railroad Co. v. Schubert, 224 U. S. 603; Greenleaf Lumber Co. v. Garrison, 237 U. S. 251; Continental Co. v. United States, 259 U. S. 156; Sproles v. Binford, 286 U. S. 374; Radio Commission v. Nelson Bros. Co., 289 U. S. 266.

It is emphasized that at the time the contracts were entered into neither of these companies was in fact or in law a public utility or common carrier, and that each disclaimed all of the privileges and obligations as such. These companies have never sought or acquired any certificate of

public convenience and necessity, any franchise, or any right to enter a municipality; they have never advertised or represented that they would sell gas to the public generally; and they have never filed any rate schedule with any regulatory commission or any other authority. At the time the Act became effective, and since, Canadian transported and sold interstate gas to Colorado, and also made sales for resale to a distributing company; and Colorado made sales for resale to one municipality, four or five distributing companies, and two pipelines, and made direct sales to five industrial customers, under private contracts respecting price, quantity, time of delivery, and so forth. But freedom of contract does not place it within the power of companies engaged in business of that kind to restrict or withhold from the control of Congress at a later time so much of the field of regulation of interstate commerce as they choose to bring within the range of their arrangements. Even though executed prior to the enactment of the Act, contracts of that nature are subject to regulation in the public interest. Cf. Mississippi River Fuel Corp. v. Federal Power Commission, 121 F. (2d) 159.

The companies made large investments on the strength of the contracts but that is not decisive, as in the very nature of things they were made subject to the exercise of the paramount authority of regulation. Radio Commission v. Nelson Bros. Co., supra.

Requiring the Impossible of Canadian—Canadian attacks the order relating to its rates and charges on the further score that it requires the company to do the impossible, and violates due process. The contract between Canadian and Colorado requires Canadian to develop, operate, and maintain its properties with diligence, so as to produce sufficient natural gas to meet the requirements of Colorado; to sell the gas to Colorado at cost; to make no contract for the sale of gas that might impair its capacity to produce gas for delivery to Colorado; to credit Colorado with all revenues, income, or profits which it may receive from any other source; and to disburse funds received from any source only in the discharge of its obligations under the contract with Colorado and any other contracts permitted under its provisions, and in payment of principal and in-

terest on its outstanding indebtedness. It is argued that the contract forecloses any possibility of profit to Canadian and therefore the order exacts the impossible and is confiscatory. The power to regulate commerce is subject to the limitations and guarantees of the Constitution. Monongahela Navigation Co. v. United States, 148 U. S. 312; United States v. Chicago, Milwaukee, St. Paul and Pacific Railroad Co., 282 U. S. 311. But permissible regulation of rates does not insure that the business shall produce net revenues, and any rate may be decreased which is not the lowest reasonable rate. Federal Power Commission v. Natural Gas Pipeline Co., supra.

This contention in its entirety proceeds upon the premise that since Canadian under the contract sells gas to Colorado at cost, there is no possibility of profit accruing to Canadian. But apparently the argument fails to give consideration to the fact that in connection with the contract under which Canadian furnishes and Colorado accepts the gas, Canadian received initially $5,000,000 in cash from Standard; that Colorado without cash consideration issued to Southwestern forty-two and one-half per cent of all its common stock, and preferred stock of the value of $1,000,000; that Southwestern shares on that basis in the beneficial ownership of Colorado and in its net earnings from time to time; and that in view of the relation existing between Southwestern and Canadian, Canadian in effect shares accordingly. Taking these and other factors into account, there is no basis for challenging the order on the ground that it exacts the impossible and is confiscatory.

The Sufficiency of the Evidence to Support the Finding of Unreasonableness of Rates and Charges—The finding of the Commission that the rates and charges of the companies were unjust and unreasonable is questioned for want of substantial evidence to support it. The passage of the Act did not automatically overthrow the contracts into which these companies had previously entered. Neither did it *ipso facto* set aside the schedules of charges upon which they had agreed. Such rates and charges could be modified only after an express finding of unreasonableness. Wichita Railroad & Light Co. v. Public Utilities Commission, 260 U. S. 48; Allen W. Hinkel Dry Goods Co. v.

Wichison Industrial Gas Co., 64 F. (2d) 881. And the right of the Commission to make a finding of unreasonableness depends upon the existence of the fact. In the absence of substantial evidence to show that the rates and charges in existence are unreasonable, a finding to that effect constitutes the arbitrary exercise of power by administrative fiat and cannot stand. Interstate Commerce Commission v. Louisville and Nashville Railroad Co., 227 U. S. 88.

But a finding of unreasonableness made after a full hearing carries with it a presumption of correctness, and the burden rests upon him who attacks it on review for want of substantial evidence to show the absence of such evidence. An extended analysis of the voluminous evidence would not serve any useful purpose as no two cases of this kind are alike in point of fact. We are content to say that a careful examination of the entire record convinces us that the finding is supported by substantial evidence, and therefore under section 19(b) of the Act, it is conclusive.

The Question of Value—Coming to the question of the rate base, Canadian and Colorado each submitted evidence tending to show reproduction cost new, less observed depreciation, and they also submitted evidence as to the original cost of the property. Wyoming introduced evidence as to actual construction costs, less observed depreciation, plus working capital and additions to plant. The evidence of the Commission staff was restricted to original cost. After considering the estimates of reproduction cost new, less observed depreciation, the Commission concluded that they were too conjectural to have probative value, as they were not based upon established facts, but were subject to the vagaries of theories and imagination. Turning to the evidence of original cost, the Commission found that the properties were all of comparatively recent acquisition or construction; that the accounting records had been sufficiently adequate and well maintained to permit a ready determination of all costs involved; that the major portion of all cost of Canadian and Colorado had been incurred since the adoption by such companies of an accounting system based on the Code of Accounts of the Public Service Commission of Pennsylvania; that the basic facts were clear and essentially undisputed; that they represented the best and only

reliable evidence respecting property values; and that, in accordance with section 6 of the act, supra, and under the record in the proceeding, no necessity existed to consider other factors than original cost. The Commission then determined original cost as of December 31, 1939, deducted a sum representing accrued depreciation, depletion, and amortization, added an amount for working capital and additions to plant, and in the case of Wyoming made a deduction for customer contributions. The amount reached by that method of computation, denominated by the Commission as prudent investment, was adopted as the rate base. The companies contend that the rate base should have been grounded upon present fair value. It must be conceded that the contention finds support in many cases holding that while actual cost, cost of reproduction new, and other elements affecting value should be taken into account and given their proper weight, the final basis of calculation in the regulation of rates of a public utility is a fair return upon the present fair value of the property used for the convenience of the public. Smyth v. Ames, 169 U. S. 466, 546; San Diego Land Co. v. National City, 174 U. S. 739, 757; San Diego Land & Town Co. v. Jasper, 189 U. S. 439, 442; Wilcox v. Consolidated Gas Co., 212 U. S. 19, 41; The Minnesota Rate Cases, 230 U. S. 352, 434; Southwestern Bell Telephone Co. v. Public Service Commission, 262 U. S. 276, 287; Bluefield Water Works & Improvement Co. v. Public Service Commission, 262 U. S. 679, 690; Board of Public Utility Commissioners v. New York Telephone Co., 271 U. S. 23, 31; McCardle v. Indianapolis Water Co., 272 U. S. 400, 410; St. Louis & O'Fallon Railway Co. v. United States, 279 U. S. 461, 484; Los Angeles Gas & Electric Corp. v. Railroad Commission, 289 U. S. 287, 305.

But the late case of Federal Power Commission v. Natural Gas Pipeline Co., supra, involved an order of the Commission reducing the rates of two companies engaged in business as a single enterprise in the production and transportation interstate of natural gas for sale at wholesale to public utilities, and the court there held that the "Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free,

within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances. Once a fair hearing has been given, proper findings made and other statutory requirements satisfied, the courts cannot intervene in the absence of a clear showing that the limits of due process have been overstepped. If the Commission's order, as applied to the facts before it and viewed in its entirety, produces no arbitrary result, our inquiry is at an end." And the later case of Federal Power Commission v. Hope Natural Gas Co., 320 U. S. 591, similarly involved an order of the Commission requiring a reduction in rates of a company engaged in the business of producing, purchasing, transporting and selling at the state line natural gas for continuous movement and ultimate distribution in other states. There the rate base adopted by the Commission was substantially identical with that here; and there, as here, it was attacked on the ground that present fair value is the only permissible rate base. But the court rejected the contention and upheld the order. In doing so, the court said that, "Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling . . . It is not the theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important." These two cases are controlling. And guided by them, it is clear that neither of these orders is to be invalidated for failure of the Commission to use present fair value as the rate base, unless in its totality it oversteps the limits of due process.

Disallowances in Arriving at Original Cost—In arriving at the original cost of the properties, the Commission eliminated certain items appearing on the books of the companies. Canadian paid to Amarillo Oil Company the sum of $5,000,000 in cash for the leaseholds. Their original cost to Amarillo Oil Company was only $1,879,504. Since Canadian and Amarillo were wholly owned subsidiaries of Southwestern, the Commission eliminated $3,120,496, representing the difference between the cost to Amarillo Oil

Company and the amount which Canadian paid. By the Memorandum of Stipulations, Southwestern, the parent of Canadian and Amarillo Oil Company, obligated itself to cause the leaseholds to be devoted to the proposed project. Disregarding the fiction of separate corporate entity, and looking to substance, the contention that the leaseholds should be included at the figure which Canadian paid Amarillo Oil Company rather than the original cost to Amarillo Oil Company amounts in substance to receiving a return on $5,000,000 for property which actually cost less than $2,000,000. There is no proper place in the field of rate-making for synthetic inflation of that kind. Pennsylvania Power & Light Co. v. Federal Power Commission, 139 F. (2d) 445.

As to Colorado, the Commission eliminated $2,352,940, representing the recorded value of stock payments made to Southwestern and Cities Service for entering into contracts for the sale and purchase of gas. By the Memorandum of Stipulations, Southwestern was obligated to require its subsidiary, Canadian, to enter into a contract to sell gas to Colorado, and Cities Service was similarly obligated to require its subsidiaries, Public Service Company and Pueblo Gas and Fuel Company, each, to enter into a contract for the purchase of gas from Colorado. But, according to the records of Colorado, Canadian refused to enter into the contract for the sale of gas to Colorado, and Cities Service refused to direct or permit its subsidiaries to enter into the contracts for the purchase of gas from Colorado; and thereupon Colorado issued to Southwestern as the nominee of Canadian 10,000 shares of preferred and 531,250 shares of common stock, and issued to Cities Service 187,500 shares of common stock. The resolution of the Board of Directors of Colorado authorizing the issuance of such stock recited that the stock first described be issued as part of the consideration for Canadian entering into the contract, and the stock last described be issued in consideration of Cities Service directing its subsidiaries to enter into contracts. The record offers little or no explanation of the refusal to enter into the contracts as provided with binding effect in the Memorandum of Stipulation, or of the failure of Colorado to exact that they be entered into without additional

consideration or inducement. Though the reasons may have been satisfactory to the parties in interest, it is manifest that the legitimate cost of Colorado's property for rate-base purposes could not be swelled by the issuance of stock in circumstances of that kind. Cf. Northwestern Electric Co. v. Federal Power Commission, 321 U. S. 119.

As to Wyoming, the Commission rejected $82,792.57, representing sums paid to Henry L. Doherty & Company for engineers fees. Wyoming and the Doherty Company maintained a contractual arrangement under which the Doherty Company placed at the service of Wyoming its combined experience, advice, and assistance in solving such problems as might arise in connection with the conduct of the business of Wyoming. The tendered advice and assistance related to numerous services, including designing and construction engineering, and fixed the compensation for each, including an engineering fee equal to five per cent of the cost of construction. An affiliate relationship existed between the two companies; Wyoming was unable on request to furnish the Commission any showing that any cost had been incurred in connection with the rendering of engineering services; and there was testimony that the books and records of Wyoming failed to contain any indication that the fees represented any actual cost of services for which the amount was paid. In short, there was no showing satisfactory to the Commission that any engineering services were rendered. The general rule in rate-making against profits in connection with transactions between affiliates warranted the Commission in eliminating the item. Cf. Pennsylvania Power & Light Co. v. Federal Power Commission, supra.

The Commission eliminated from the capital account of Canadian the sum of $129,032, being expenditures previously charged to current operating expense but now sought to be capitalized; it made a like deduction of $440,050 from the account of Colorado; and that action is challenged. In each instance the company added or sought to add the amount in arriving at its claimed original cost. The amount represented reaccounting rather than the correction of accounting, for the charges were made to operating expense in conformity with the established ac-

counting policy of the company in effect at the time, and they were never considered capital investment until the Commission began its investigation. In respect of many expenditures there is at best an indistinct line of demarcation between operating costs and capital costs. It often is difficult to blueprint a clear distinction between expenditures made for operation and maintenance and those made for construction. And therefore a natural gas company, as defined by the Act, must be allowed to exercise a measure of discretion in making its determination between the two. But a method, reasonably acceptable to good accounting, must be adopted and adhered to consistently. Consistent principles and practices of accounting must be followed. Change cannot be made at will. These companies deliberately exercised their discretion in charging these expenditures to expenses; Canadian has fully recovered from Colorado its expense now sought to be capitalized; and Colorado has treated its expenditures now in question as necessary operating expense to be deducted from earnings before arriving at net profits. The Commission was well within the ambit of its authority in making the deductions on the ground that it would do violence to recognized principles of equity to permit these companies at this late hour to shift their position and treat retroactively these items as capital investment upon which they are entitled to receive return. Cf. Federal Power Commission v. Natural Gas Pipeline Co., supra; Northwestern Electric Co. v. Federal Power Commission, 125 F. (2d) 882, affirmed, 321 U. S. 119; City of Wheeling v. National Gas Co., 175 S. E. 339; Peoples Gas Light & Coke Co. v. Slattery, 25 N. E. (2d) 482.

The Commission made a deduction of $366,507 from the original cost claimed by Canadian for interest during construction, and that action is challenged. Canadian recorded on its books a charge for interest during construction, computed on the basis of a construction period beginning May 1, 1927, and ending October 31, 1928, and including the full amount which Canadian paid Amarillo Oil Company for the leaseholds. The Commission found that regular deliveries of gas commenced the latter part of June, 1928, and continued thereafter. The Commission determined that the construction period ended July 1, 1928, and disallowed interest after that date. The books of Wyoming showed the

capitalization of interest during construction. The amount included interest on main line construction and on lateral construction. The Commission disallowed the claim in part on the ground that it represented interest computed on a proportion of the total cost of the property, estimated by the company to be in excess of that required to handle the business actually done during the period. The Commission characterized the claim as the capitalization of a fictitious and arbitrary amount after the close of the construction period, and stated that interest ceases to be a cost of the original plant when commercial operations begin. These companies were not entitled to interest after the construction period ended and they began to receive earnings. Alabama Power Co. v. McNinch, 94 F. (2d) 601.

Elaboration is unnecessary concerning the disallowance of interest on the amount which Canadian paid Amarillo Oil Company for the leaseholds in excess of the original cost to Amarillo Oil Company. We have previously said that, due to the affiliate relation between Canadian and Amarillo Oil Company, the Commission in arriving at the original cost providently included the property at the amount of the original cost to Amarillo Oil Company. That being its cost for rate-base purposes, it follows that interest on the excess could not be included in the rate base.

The Claim for Going Concern Value—Wyoming claimed an allowance for going concern value as part of its rate base. In rejecting the claim and failing to make any allowance for that element, the Commission found that the amount claimed represented a judgment figure wholly unrelated to any costs or outlays, and was therefore deemed unjustified. It is well settled "that there is an element of value in an assembled and established plant, doing business and earning money, over one not thus advanced" and that such "element of value is a property right, and should be considered in determining the value of the property, upon which the owner has a right to make a fair return when the same is privately owned although dedicated to public use." Des Moines Gas Co. v. City of Des Moines, 238 U. S. 153, 165; City and County of Denver v. Denver Union Water Co., 246 U. S. 178, 191, 192; McCardle v. Indianapolis Water Co., supra; Los Angeles Gas & Electric Corp. v.

Railroad Commission, supra. But even though it is an element for appropriate inclusion in the rate base, there is no constitutional exaction that it be separately stated as such and added to cost figures attributable the physical properties. Columbus Gas & Fuel Co. v. Public Utilities Commission, 292 U. S. 398, 411; Denver Stock Yard Co. v. United States, 304 U. S. 470, 479; Driscoll v. Edison Light & Power Co., 307 U. S. 104; Federal Power Commission v. Natural Gas Pipeline Co., supra. The requirement may be satisfied if a reasonable allowance is "reflected in the other items and particularly in the appraisal of the physical assets as part of the assembled whole." Columbus Gas & Fuel Co. v. Public Utilities Commission, supra.

The amount claimed by the company was $175,000. A valuation engineer residing in New Jersey testified in support of the claim. He stated that he did not employ any mathematical formula in arriving at his conclusion as to amount, and he admitted that it was only a judgment figure. He stated with commendable candor that he reached it "just as a horsetrader looks at a horse and decides what it is worth". The record fails to indicate affirmatively whether the element was indirectly reflected to any extent in other items and in the appraisal of other properties as part of the assembled whole. But in any event, there is no basis on which to rest the conclusion that the failure of the Commission to state separately and add an amount as going concern value overstepped the limits of due process.

Allocation of Cost of Service—The orders are assailed for failure of the Commission to make a separation or allocation of the property used in regular business from that used in unregulated business. Under section 1 of the Act, natural gas moved in interstate commerce and sold for ultimate distribution to the public is subject to regulation by the Commission, but gas transported in interstate commerce and not sold for such distribution to the public as well as gas sold intrastate is not subject to regulation. Each of these companies is engaged in both kinds of business. The Commission expressed its awareness of the necessity of determining the reasonableness or unreasonableness of the rates and charges subject to its jurisdiction. observed that this required the distribution of the total

costs of operations, including depreciation, taxes, and a fair return, among the various customers served, individually or by appropriate groups, and commented that to the extent that such costs allocated to sales under the jurisdiction of the Commission were less than revenues received, the rates and charges made were unjust and unreasonable, and revenues must be reduced accordingly. The Commission further stated that it did not follow from that obligation that an allocation of physical property or portions thereof must be made before any excessive returns were determined. After observing that nowhere in all the evidence submitted by Canadian and Colorado was there a complete presentation of the entire operations, broken down between jurisdictional and nonjurisdictional operations, the Commission determined that all which could be accomplished by an allocation of physical properties could be attained by allocating costs including the return. And the Commission added that such method was by far the most practical and business-like. Following these observations, statements, and findings, the Commission made the allocation as to each company.

Where, as here, a natural gas company is engaged in an integrated business, part of which is subject to regulation and part of which lies beyond the reach of the regulatory jurisdiction of the Commission, some separation of the property, capital, and revenue is essential in order that regulation may be confined to its permitted field. The separation may be appropriately effected by estimating or appraising the value of the property used in the regulated business and that used in the unregulated business. Smith v. Illinois Bell Telephone Company, 282 U. S. 133. But that method in its completeness is not always exclusive of others. The separation or allocation may be effected by application of any formula which makes the principle a working one suitably adapted to the particular circumstances. Columbus Gas & Fuel Co. v. Public Utilities Commission, supra.

The integrated properties of these companies were designed and are being used in making both direct sales and resales. The companies rely on the same transmission and other facilities in serving both classes of customers, and

both classes of customers jointly share the benefit of the same facilities and gas supply. In these particular circumstances, an allocation of the cost of supplying gas service to customers cannot be said to be a fatally inappropriate or infirm means of effectuating a separateness of the property and capital used in the integrated business.

But, assuming that the requisite separation may be accomplished by an allocation of cost of service, the method used by the Commission is said to be erroneous. It is argued among other things that it assumes that all of the property is used in common in the conduct of all business, whereas a large portion is used exclusively in the regulated portion, another part is used exclusively in the unregulated portion, and only a part is used in common in both businesses; that in respect to the property which is used in common for both businesses, it fails to give consideration to the priority or preferential use of such property in supplying gas for domestic consumption as against unregulated business, and ignores actual peak demands and load factors; that it operates to minimize all costs, produces apparent cost much less than actual cost, and shifts cost from regulated to unregulated business; and that it is unsound both in fact and law. It may be conceded, without deciding, that the method is not free from defects or imperfections in all its aspects. But even so it cannot be said that as the consequence, the impact of the orders of reduction, each in its totality, produces arbitrary results or oversteps the bounds of due process. Therefore the orders are not open to further judicial inquiry on these grounds. Federal Power Commission v. Natural Gas Pipeline Co., supra; Federal Power Commission v. Hope Natural Gas Co., supra.

Depletion, Depreciation and Amortization—The companies introduced evidence relating to accrued depreciation. It was based upon observed per cent condition of the property. Accrued depletion as determined by Canadian was based on estimates of original and remaining gas reserves. The evidence of the staff of the Commission treated accrued and annual allowances for depreciation on the basis of the application of the service-life principle. The Commission observed that if the theory of observed per cent condition

of the property were carried out consistently, it might be considered as having some elements of reasonableness; that the small observed depreciation would find its counterpart in an equivalently small annual charge to operating expenses to cover the yearly added amount of observed depreciation; that this was not done in the estimates submitted by these companies; that, instead, in calculating expenses chargeable to the consumer high depreciation charges were computed, and in computing return to the company a small deduction from the cost of plant was computed. And after full consideration, the Commission adopted the service-life principle for determining annual and accrued depreciation and the production method for determining annual and accrued depletion of production facilities.

Section 6 of the Act empowers the Commission to determine the depreciation in property used by a natural gas company, but it fails to prescribe the method to be used in the discharge of that function. Depreciation represents the loss, not restored by current maintenance, causing the ultimate retirement of the property. The factors entering into it usually are wear and tear, decay, inadequacy, and obsolescence. And in determining reasonable rates to be charged by a public utility, it is proper to include in the operating expenses an allowance for consumption of capital in order that the integrity of the investment in the service may be maintained. Lindheimer v. Illinois Bell Telephone Co., 292 U. S. 151.

As we understand, the Commission in arriving at accrued depreciation determined the amount to be deducted from original cost on the age-life basis by applying the straight life service method to the property. The contention that the testimony of valuation engineers who examined the property and made estimates in respect of its condition should have been accepted in preference to calculations based on averages and assumptions finds its genesis in Pacific Gas & Electric Co. v. City and County of San Francisco, 265 U. S. 403, and McCardle v. Indianapolis Water Co., supra. But there is no basis in this record on which it can be concluded that the determination of depreciation in the manner adopted by the Commission will result in any of these orders in its entirety causing a failure to restore

the capital investment at the end of the term, and therefore no deprivation of property is involved. Once more, in the absence of impingment upon due process, review is ended. Federal Power Commision v. Natural Gas Pipeline Co., supra; Federal Power Commission v. Hope Natural Gas Co., supra.

Gas Reserves—In connection with its determination of annual allowances for depreciation and depletion, the Commission found that Canadian's remaining recoverable gas reserves as of December 31, 1939, were not less than 2,800,000,000 Mcf at 14.65 pounds pressure base and an abandonment pressure of approximately 50 pounds; and that at the then present and expected future rate of production of about 55,000,000 Mcf per year, such reserves would last 53 years. The finding is characterized as arbitrary, capricious, and without any basis in the record. It is said that the reserves were much less in amount and that as a source of supply for long distance pipe lines they will not extend in width beyond 1956. The field is about 125 miles long and varies from 10 to 40 miles. It comprises approximately 1,500,000 acres, of which about 1,000,000 acres produce sweet gas, and some 500,000 acres produce sour gas. Oil is produced in a portion of the field. Natural gas was discovered in 1918, on acreage now owned by Canadian; and at the time of the hearings in these proceedings there were about 1650 wells producing gas only, and about 4200 wells producing both oil and gas.

The two methods most frequently used in estimating recoverable gas reserves are the rock pressure decline method and the sand thickness porosity method. Using the pressure decline method, an experienced geologist and petroleum engineer on the staff of the Commission testified at length. He estimated that the reserves for the entire field were 22,420,000,000 Mcf, and that those of Canadian were 3,645,213,000 Mcf. For the purpose of determining the true average or equilibrium pressure prevailing throughout the field, he divided the field into areas of comparatively equal pressures, called quadrants, and made an estimate for each quadrant. His estimate in the aggregate was the sum of his estimates for the several quadrants. A scientific article published in 1933 was introduced in evidence in which the

recoverable reserves in the field were estimated to be 16,100,000,000 Mcf. Two qualified experts testified for Canadian. One used the sand thickness porosity method, and he estimated that the reserves in the field amounted to 9,532,027,596. The other used the open flow method which is a variation of the sand thickness porosity method, and his estimate of the field was 8,840,132,111 Mcf. And there was much other evidence having bearing upon the question. The Commission found itself unable to accept in toto any of the estimates. The Commission observed that the pressure decline method is recognized as a satisfactory method of estimating gas reserves in fields that are depleted as much as fifteen per cent or more and where reliable pressure and production data are available; that the Texas Panhandle Field met these qualifications; that it was a well developed field; and that the pressure and production records maintained by the Railroad Commission of that state were adequate and satisfactory. The Commission found that the pressure decline method was to be desired over the methods used by the witnesses for the company; that the estimates of the witnesses for the company were not founded on proper data and must be considered essentially unreliable; that if the method of averaging quadrants was incorrect, it favored the company position of lower reserves; that the acreage of the company was among the very best in the entire field; and that after weighing all pertinent facts of record and making due allowance for the criticisms of the estimate submitted by the Commission staff, the recoverable reserves were found to be not less than 2,800,000,000 Mcf of gas.

The rock pressure decline method of estimating recoverable reserves of natural gas is not only accepted practice among mining engineers but it has been accorded judicial recognition. Dayton Power & Light Co. v. Public Utilities Commission, 292 U. S. 290. It lay within the discretion of the Commission to select that method as the most satisfactory and reliable means of determining the reserves of Canadian. And the Commission was not required to accept at face value the opinion evidence of the witnesses who testified as experts in respect to volume. The weight to be given to their evidence was a matter for the appraisal and

judgment of the Commission, in the light of the circumstances. Existing volume, pressure differentials and consequent drainage, and other recovery factors should be given consideration in arriving at a final conclusion concerning the reserves. But it nowhere appears that the Commission failed appropriately to weigh these elements.

As has already been said, section 19(b) of the Act provides that a finding of fact made by the Commission shall be conclusive on review if it is supported by substantial evidence. Congress thus committed to the Commission the function of weighing evidence, drawing inferences from the facts and circumstances established, and choosing between conflicting inferences. And a court is not free to substitute its view of the facts for that of the Commission. The underlying considerations which actuated Congress in vesting that power in the Commission are clear. The Commission often deals with subjects which are specialized, technical, and complex. It is relatively better staffed for its task than are the courts. And its members frequently bring to the discharge of their duties rich experience in those particular fields. The determination of the recoverable reserves of this company necessarily involved specialized and technical factors. The evidence relating to the question extends to great lengths. No useful end would be served by a detailed analysis of it. We think the finding is supported by substantial evidence and therefore is not vulnerable to the charge of lacking basis in the record.

Fair Rate of Return—The evidence submitted by the companies relating to a fair annual return upon the rate base varied in amount from 8 per cent to 9.17 per cent, while that of the Commission staff was 6½ per cent. The Commission fixed 6½ per cent for all three companies. The Commission stated in that connection that there was no exact formula for determining a reasonable rate of return; that in the final analysis the rate must be the best judgment of the Commission, founded upon the evidence and guided by the basic facts required by law to be considered; that consideration must be given to the return earned by like investments which are attended by corresponding risks and uncertainties in the same vicinity over the same period of time; that Canadian had a long-term and essentially

cost of service contract with its affiliate, Colorado; that the sales of Colorado and Wyoming were also principally to subsidiaries or affiliates and to stable markets; that Colorado's principal industrial sales were also to an affiliate—Colorado Fuel and Iron Corporation; and that all these facts materially reduced basic business risks that might be present under other circumstances.

The rate of return which will constitute just compensation depends upon the circumstances. A public utility is entitled to such rates as will permit it to earn a return on the value of its property devoted to the convenience of the public substantially equal to that generally being earned in that area by other business enterprises which are attended by corresponding characteristics, including uncertainties, risks, hazards, and other elements affecting the operations. The return should be sufficient in amount to assure confidence in the financial soundness of the utility, and to enable it under efficient management to maintain its credit. Bluefield Water Works & Improvement Co. v. Public Service Commission, supra. But no formula can be laid down which will apply uniformly in all cases or to all kinds of utilities. That which is fair for one may be quite inadequate for another, depending upon the difference in circumstances. And the ascertainment of a fair return in a given case is a matter incapable of exact mathematical demonstration. It is one of reasonable approximation having its basis in a proper consideration of all relevant facts. Willcox v. Consolidated Gas Co., supra; United Railways and Electric Co. v. West, 280 U. S. 234.

Making application of these principals, and taking into consideration the history of these companies, their relations and opportunities, their position for future financing, the stability of demand for their product, and other relevant factors, we think that a return of 6½ per cent on the rate base as fixed by the Commission is not so inadequate as to amount to confiscation. Federal Power Commission v. Natural Gas Pipeline Co., supra; Federal Power Commission v. Hope Natural Gas Co., supra.

Finally, the Commission made allowances for working capital and additions to plant of all three companies, and these are attacked for insufficiency in amount; the Commis-

sion rejected some claims, and the companies predicate error on that action; and the Commission made certain adjustments, of which the companies complain. We do not discuss these seriatim. To do so would only extend this opinion, without adding anything of value to the accelerating accumulation of judicial utterances. The Commission was empowered to make pragmatic adjustments for which the particular circumstances call. Federal Power Commission v. Natural Gas Pipeline Co., supra. On the whole record, we are unable to say that any of these orders in its total effect produces any arbitrary result or does violence to due mission v. Natural Gas Pipeline Co., supra; Federal Power Commission v. Hope Natural Gas Co., supra.

The orders are severally

AFFIRMED.

Decree.

Twenty-seventh Day, May Term, Saturday, July 8th, A. D. 1944. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Alfred P. Murrah, Circuit Judges.

This cause came on to be heard on the transcript of record from the Federal Power Commission, and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed by this Court that the order of March 18, 1942 of the Federal Power Commission in this cause be, and the same is hereby affirmed.

Stay Order.

Twenty-seventh Day, May Term, Saturday, July 8th, A. D. 1944. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Alfred P. Murrah, Circuit Judges.

This matter coming on for hearing this day before the Court on the motion of petitioner for continuance of stay order and stay of issuance of mandate; and the Court having considered said motion;

And the Court having this day entered its judgment herein pursuant to the Court's opinion heretofore filed in this cause;

It is now ordered that the stay order entered herein on May 16, 1942, on the terms and conditions therein set forth, be continued in full force and effect for a period of 60 days from and after the date hereof, and if within said period of 60 days a petition for certiorari is filed in the Supreme Court of the United States and a certificate thereof is filed in this Court within 60 days pursuant to Rule 28, then said stay order shall continue until final disposition by the Supreme Court.

It is further ordered that the issuance of mandate shall be stayed for a period of 60 days from the date hereof, and if within said period of 60 days a petition for certiorari is filed in the Supreme Court of the United States, with due certification as aforesaid, then the issuance of mandate shall be stayed until final disposition by the Supreme Court.

Petition for Rehearing.

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

TENTH CIRCUIT.

No. 2561

COLORADO-WYOMING GAS COMPANY, a corporation,
PETITIONER,

vs.

FEDERAL POWER COMMISSION; COLORADO INTERSTATE GAS COMPANY, a corporation; CITY & COUNTY OF DENVER, COLORADO; PUBLIC SERVICE COMPANY OF COLORADO; and CANADIAN RIVER GAS COMPANY, RESPONDENTS.

ON PETITION TO REVIEW AND SET ASIDE ORDER OF THE FEDERAL POWER COMMISSION.

PETITION FOR REHEARING.

Comes now Colorado-Wyoming Gas Company, Petitioner herein, and hereby petitions this Court for rehearing, reconsideration, correction and vacation of its opinion and the decree pursuant thereto. Sundry of the more substantial matters and issues decided erroneously, as are patent from a consideration of the record, the law and the opinion, are stated briefly and respectfully, as follows:

1. This Court has ignored the issue of jurisdiction presented by this Petitioner, to-wit: That the jurisdiction of the Federal Power Commission over this Petitioner in this rate case under the Natural Gas Act is limited to rate regulatory jurisdiction at the Cheyenne, Wyoming "city gate" only. The findings of the Commission, adopted by the Court, are not supported by the record and are contrary to law.

2. This Court in affirming the so-called "original cost" rate base of the Commission has failed and neglected to consider the fact that the alleged "original cost" as determined by the Commission is not the *entire* "original cost" in fact and is not supported by but contrary to the record herein. The Commission determination, among other things, does not consider or embrace engineering design or construction.

3. This Court erred in approving the action of the Commission in adopting "original cost," so-called, as the exclusive measure of rate base, and in discarding the principle of "fair value."

4. This Court in approving "the service-life principle for determining annual and accrued depreciation," promulgated by the Commission, disregarded the record in this case, wherein it affirmatively and specifically appears that there is no foundation of "substantial evidence" to support the speculative conclusions of service life indulged by the Commission and its staff, and incorporated into its order here under review. The determination of service life depends upon the existence of basic facts, absent in the record herein.

5. The Commission determination of "depreciated original cost," adopted by the Court, is not supported by the record and is contrary to law.

6. This Court in approving the disallowance by the Commission of "going concern value" disregarded the clear, specific and uncontroverted evidence in the record that the "original cost," as found by the Commission, includes only "bare bone" costs of physical items of property, and does not reflect "a reasonable allowance" or any allowance whatever "in the other items and particularly in the appraisal of the physical assets as part of the assembled whole."

7. The Court erred in ignoring the affirmative and uncontroverted evidence by Petitioner of the fact of "going concern value" of its property and business.

8. The opinion of the Court under the subject title of "Allocation of Cost of Service," as related to this Petitioner involves assumptions and conclusions both of law and fact directly contrary to the record and controlling law, and particularly to-wit:

(1) It is assumed that the property of this Petitioner and the properties of Colorado Interstate Gas Company and Canadian River Gas Company, admittedly separate and independent for rate making purposes, nevertheless are and can be "integrated" as a single system for purposes of allocation, which is necessary and incident to rate making in this case.

(2) It is assumed that the "formula" of alleged allocation indulged by the Commission is legalized by *Columbus Gas and Fuel Company v. Public Utility Commission*, 292 U. S. 398, 411, which assumption is contrary to the express language of that decision, and other controlling law.

(3) The inaccuracy, manifest in the record, of the asserted factual basis for the Commission's conclusions as to "Allocation of Cost of Service," so-called, is ignored by the Court. The law requires a property allocation and is not complied with by a substitute "formula" described as "cost allocation" but admittedly not involving any allocation of property whatever.

(4) The Court has ignored the fact that the Commission "allocation," so-called, is not based in whole or in part upon the property and operations of this Petitioner, but contrary to law is predicated on the operations of Colorado Interstate Gas Company.

9. The Court, in applying the settled rule that there is a presumption on review that the action of the administrative agency is correct and the burden of proving error is on Petitioner, also assumes and predicates its opinion on the erroneous legal view that the burden of proof throughout this case, both before the Commission and before this Court, rests upon the Petitioner.

10. The Court erred in its stated conclusion: "And the right of the Commission to make a finding of unreasonableness depends upon the existence of the fact. * * * We are content to say that a careful examination of the entire record convinces us that the finding is supported by substantial evidence * * *", in that under the Natural Gas Act and the law of the land the review provided and to which this Petitioner is entitled is a review of "the facts" upon which the asserted ultimate conclusion of "unreasonableness" rests, to determine whether such "facts" are supported by "substantial evidence."

11. The Court erroneously has relied upon *Federal Power Commission v. Hope Natural Gas Co.*, 320 U. S. 591, as controlling authority, requiring it to decide the issues of law and fact in this case, against this Petitioner. In that case it is declared the propriety of the Commission's order must be examined by the reviewing court "as applied to the facts before it" (the Commission), which examination this Court has not made "as applied to the facts" in the record.

12. The Court, under its announced conception of judicial duty and limitation of power, has discarded "the law of the land," and thus avoided the express and unambiguous direction of the Congress to this and other Courts of review, embodied in the Natural Gas Act.

13. The Court, contrary to the declared purpose and terms of the Natural Gas Act, has construed that act as denying altogether the right of review and even to the extent required by the Constitution to protect against "confiscation," and thereby has denied to this petitioner its rights under the Fifth Amendment to the Constitution.

14. The Court in affirming the order of the Commission and in its opinion and judgment herein, has denied to this Petitioner "due process of law," under established, ordered and orderly processes of constitutional government, in that, government by administrative edict, unsupported by or contrary to law and fact, is held to be immune from the express judicial review of the Commission determination of, (1) basic material fact, (2) ultimate conclusions, and (3) questions of law.

Wherefore, Colorado-Wyoming Gas Company prays that

rehearing be granted herein, the judgment vacated, the opinion withdrawn, and the cause remanded to the Federal Power Commision for further proceedings conformable to the facts and controlling law.

Respectfully submitted,

DONALD C. MCCREERY,
PAUL W. LEE,
GEORGE H. SHAW,
WM. A. BRYANS, III,
CHARLES J. KELLY,
Attorneys for Petitioner.

CERTIFICATE OF COUNSEL.

I, DONALD C. MCCREERY, one of counsel for the above-named Petitioner, Colorado-Wyoming Gas Company, do hereby declare and certify that the foregoing petition for rehearing is presented in good faith and not for delay.

DONALD C. MCCREERY.

FILED
JUL 26 1944
Robert B Carter, Jr.
Clerk

MEMORANDUM BRIEF IN SUPPORT OF PETITION FOR REHEARING.

This petition for rehearing is neither routine nor casual. It is addressed to fundamental misconceptions of both law and fact by this Court: (1) of the ambit of the Commission's statutory power; (2) of the manner in which that authority legally may be exercised; (3) of the probative substance of the record; (4) of the legal propriety of the ultimate conclusions of the Commission; (5) of the character and extent of the duty of review delegated to this Court; and (6) of controlling principles of government, mandates of Congress and other law of the land.

The Extent Geographically of the Rate Regulatory Jurisdiction of the Commission over this Petitioner.

The position of this petitioner is that the one and *only* sale for resale by it in *interstate* commerce (Sec. 1(b) of the Act) that is, "the sale of natural gas across state lines," is at the "city-gate," Cheyenne, Wyoming; and that *all* "city-gate" sales for resale in Colorado are made in *intrastate* commerce.

This issue, presented herein in our main brief (pp. 147-160) and reply brief (pp. 24-26), to which the attention of the Court again is urged, is neither considered nor resolved by this Court in its opinion. The action of the Commission in summarily disposing of this question by merely assuming rate regulatory jurisdiction over *all* operations of Colorado-Wyoming Company, in Colorado as well as at the "city-gate," Cheyenne, Wyoming, is (negatively and inferentially) adopted by this Court. This petitioner is entitled upon this issue, as well as upon other issues in the case, to a separate, direct and specific consideration and determination thereof by this Court, under the terms of the Natural Gas Act, the facts in this record and other controlling law.

> "The determination of the extent of authority given to a delegated agency by Congress is not left for the decision of him in whom authority is vested."
>
> *Addison v. Holly Hill Fruit Products, Inc.* (June 5, 1944) ..... U. S. .....; 64 Sup. Ct. 1215, 1220.

Colorado-Wyoming Company purchases its gas supply *in Colorado* (at Littleton) from Colorado-Interstate Gas Company. Such completed sale by the latter named company to petitioner is subject to the rate regulatory authority of the Commission, and that authority has been exercised by the Commission. *Colorado Interstate Gas Co. v. Federal Power Commission, et al.* (No. 2550, in this Court). The system of the two companies are connected for the purposes of such sale, purchase and delivery. The two systems, however, are not "integrated," nor in any sense a single system. Upon this, the record is clear, (Pet. Main. Br., pp. 30-31, Reply Br. pp. 18-19). This fact is admitted by the Commission in its opinion (Op. R., Vol. I., p. 79) and by the impressive fact that throughout the proceedings before the Commission and the rate determinations made by it, Colorado-Wyoming Company was of necessity considered and dealt with as wholly separate from and independent of Colorado Interstate Gas Company (save only that the Commission, unsupported by fact, resorted to the fiction of "integration" for purposes of its "allocation of cost," so-called). Colorado-Wyoming Company, then an operating company, was no part of or in any manner considered in the agreed plan of development (Ex. I, p. 7, Rec. Vol. III) of the Texas pipeline to Denver (Op. of Ct., pp. 3-5) but became a purchaser of such gas at a later date because of the unexpected exhaustion of the Wellington Colorado Field (Op. of Ct., p. 6) (Comm. Ex. 51, R. Vol. III, pp. 1-6). The Commission action is responsive, neither to fact, logic nor consistency.

To buttress its assumption of enlarged geographic jurisdiction the Commission relied upon *Illinois Natural Gas Company v. Central Illinois Public Service Co., et al,* 314 U. S. 498, 62 Sup. Ct. 381. This contention of the Commission is answered fully in our main and reply briefs, and our position in that behalf is supported in the later opinion of the Supreme Court in *Federal Power Commission, et al v. Hope Natural Gas Co.*, ..., U. S. .....; 64 Sup. Ct. 281.

Therein that Court differentiates and distinguishes the ambit of rate making authority under Sections 4 and 5 of the Act, and the further unrestricted authority of the Commission with respect to extension or abandonment of facilities and service and certificates of public convenience and

necessity under Section 7 of the Act. It is entirely clear that these two authorities, independently delegated to the Commission, stem from separate and different basic jurisdictional facts. The Supreme Court, after referring to *Illinois Natural Gas Company v. Public Service Co., supra,* which relates only to the jurisdiction of the Commission under Sec. 7 of the Act, declares:

"As stated in the House Report the 'basic purpose' of this legislation was 'to occupy' the field in which (Note: Citing the *Kansas Gas* and *Attleboro cases)* the States might not act. * * * In accomplishing that purpose the bill was designed to take 'no authority from the State Commissions' and was 'so drawn as to complement and in no manner usurp State regulatory authority' * * *

* * *

"The Federal Power Commission was given broad powers of regulation. The fixing of 'just and reasonable' rates (Sec. 4) with the powers attendant thereto *(Note:* The power to investigate and ascertain the 'actual legitimate cost' of property (Sec. 6), the requirement as to books and records (Sec. 8), control over rates of depreciation (Sec. 9), the requirement for periodic and special reports (Sec. 10), the broad powers of investigation (Sec. 14), are among the chief powers supporting the rate making function) was the heart of the new regulatory system. Moreover, the Commission was given certain authority by Sec. 7 (a), on a finding that the action was necessary or desirable 'in the public interest' to require natural gas companies to extend or improve their transportation facilities and to sell gas to any authorized local distributor. By Sec. 7 (b) it was given control over the abandonment of facilities or of service, and by Sec. 7 (c) (as amended) * * * limited grandfather rights were granted companies desiring to extend their facilities and services over the routes or within the area which they were already serving. Moreover, Sec. 7 (c) was broadened so as to require certificates of public convenience and necessity not only where the extensions were being made to markets in which natural gas was already being sold by another company but in other situations as well.

* * *

"* * * But the Commission was not asked here for a certificate of public convenience and necessity under Sec. 7 for any proposed construction. *It was faced with a determination of the amount which a private operator should be allowed to earn from the sale of natural gas across state lines through an established distribution system.* Secs. 4 and 5, not Sec. 7, provide the standards for that determination.

"* * * *We hardly can assume, in view of the history of the Act and its provisions, that the resales intrastate by the customer companies which distribute the gas to ultimate consumers in Ohio and Pennsylvania are subject to the rate making power of the Commission.* * * * The Committee report stated that the Act provided 'for regulation along recognized and more or less standardized lines' and that there was 'nothing novel in its provisions.' * * * *Sec. 4 (a) and Sec. 5 (a) contain only the conventional standards of rate making for natural gas companies.*" (Emphasis ours.)

Under Section 7 the general supervisory jurisdiction of the Commission reaches every "natural gas company" as defined by the Act. Colorado-Wyoming Company concededly is a "natural gas company" under the Act, that is, "engaged in the transportation of natural gas interstate commerce, or the sale in interstate commerce of such gas for resale." But the rate regulatory jurisdiction of the Commission under Sections 4 and 5 is measured and limited by and to actual *interstate* sales for resale (Sec. 1 (b)), or as stated by the Supreme Court in the *Hope Natural Gas Co. case*, "sale of natural gas across state lines." See also, *Jersey Central Power & Light Co. v. Federal Power Commission*, 319 U. S. 61, 63 Sup. Ct. 953, 960, and Reply Brief of Petitioner, pp. 24-26.

The decision in the *Hope Natural Gas Co. case* obviously is no authority whatever either in fact or in law for the conclusion of the Commission that because of the connection of the pipe line system of Colorado-Wyoming Company with that of Colorado-Interstate Gas Company, the *intrastate* sales for resale of this petitioner in Colorado are "subject to the rate making powers of the Commission." Both the

Congressional Committee Report and the Supreme Court are in agreement as to the "basic purpose" of the Act, which was "to occupy" a limited field, particularly defined in the Committee Report upon which Congress relied and acted. To accomplish this the bill "was designed" and "so drawn" to take "no authority from State Commissions" and "in no manner usurp State regulatory authority." And declare both Committee Report and the Supreme Court there was "nothing novel in its provisions." To the States, says Congress, the Supreme Court concurring, actually were left all problems of local rate regulation.

It is therefore unquestioned that the area of the rate making authority of the Commission is strictly limited and intended to be so. The restricted ambit of such power, declared in both affirmative and negative language (Sec. 1 (b)) must control the Commission and must be enforced by the Courts if Congress is to continue to perform the legislative functions delegated to it. Whatever broad powers the Commission may have *within* the ambit of its statutory authority (Op. Ct., p. 11) can afford neither justification nor excuse for the assertion by it of enlarged and forbidden boundaries and frontiers of power.

Yet the Commission, with the apparent approval of this Court, has asserted rate regulatory jurisdiction over local Colorado sales for resale by petitioner, which buys all of its natural gas requirements *locally in Colorado.* This petitioner, moreover, is neither an "associate" of or "integrated" with Colorado-Interstate Gas Company, in fact or in law, but merely one of its "customer companies" (Op. Ct., p. 6). The judgment of every administrative agency or Court should be so schooled that by mere sounding phrases it is not fooled. As a simple and practical matter and one of easy and common understanding, the sale by this petitioner of natural gas for resale, at the "city gate" Greeley, Colorado, to the Greeley Gas and Fuel Co. for instance, is a purely local sale, clearly subject to the rate regulatory jurisdiction of the State of Colorado, and obviously intended and declared by Congress to be withheld from the Commission. The Littleton "gate rate" *necessarily* evidenced the consummation of the sale, purchase and delivery of natural gas to petitioner after completion by Colorado-Interstate

Gas Company of its interstate transportation thereof. The Commission position is nothing less than shocking, and yet this Court by default has permitted that Commission position to prevail.

The Act expressly withholds *all* control over intrastate sales for resale, in addition to all "direct" sales. It is not to the point that Congress possibly might have conferred full power of rate control over the local Colorado sales for resale, as incidental to the major grant of authority—it did not do this. If the Colorado-Wyoming Company pipeline system did not cross the state line into Wyoming, the Colorado business would be beyond peradventure local. The Colorado business does not become national or interstate or constitute "the sale of natural gas across state lines," and subject to Commission rate regulatory control, merely *because* the Cheyenne "city-gate" contract of "sale for resale" made and consummated *in Wyoming* is subject to Commission rate regulatory jurisdiction. *Smith v. Illinois Bell Telephone Co.*, 282 U. S. 133, 51 Sup. Ct. 65, 70 *et seq.*

The substantial consequences of the error here involved are clearly shown by the record. In 1939, the test year adopted by the Commission, the total sales for resale were 1,706,000 Mcf, producing $579,000, of which sales for resale at the Cheyenne, Wyoming, "city-gate" were 494,000 Mcf, producing $182,000. Such Wyoming sales for resale were less than one-third of the total sales for resale both in quantities of gas sold and revenue derived therefrom. (R. Vol. III, Ex. 245; St. No. 4 and St. No. 8). By the Commission order of reduction in the rates of "sales for resale" (erroneous also in other respects), $58,000 was allocated to Wyoming "sales for resale" and $61,000 to Colorado "sales for resale" (R. Vol. I, p. 85).

The Duty of Judicial Review.

Before consideration of further specifications of this petition for rehearing it appears necessary to discuss the intended and declared scope of this statutory review, that is, to ascertain whether this review is merely *pro forma*, or partakes of the real quality of a judicial proceeding. To review or not to review is the question. The two views are repugnant and mutually exclusive, both in theory and in

practice. The adoption of either precludes any use of the other. And this fact cannot be dissolved by mere words. If this review in substance amounts merely to a validation of the Commission order, subject only to a vague and undefined right of protection against a newly restricted concept of "confiscation" measured only by sounding phrases, then Congress has deliberately withheld that which it purported to give. Such a conclusion cannot be indulged unless obviously and unmistakably intended and expressed. To this inquiry we now turn.

1. The Act specifically requires "a hearing," which under our system of government is a term of substance, and clearly imposes the burden of proof on the Commision itself (Op. Comm. R. Vol. I., p. 79), and apparently recognized by the Court (Op. Ct., p. 15).

2. The foundation of the Commission "rate making function" is largely factual as pointed out by the Supreme Court in the *"Hope Natural Gas Co. case"* (Secs. 6, 8, 9, 10 and 14).

3. Hearings, appropriate records thereof, and governing rules of procedure, contemplate a full and complete trial of all relevant issues of fact and law (Secs. 15 and 16).

4. The provision for rehearing before the Commission provides that such application "shall set forth *specifically* the ground or grounds upon which such application is based," not merely a general objection that the finding of "unreasonableness" is "arbitrary" (Sec. 19 (a)). Thus the Commission is given opportunity to correct its errors, on the assumed concept that "true wisdom always is discreet, and not ashamed of wise retreat."

5. The judicial review provided: (1) Is predicated solely upon the "transcript of the record" before the Commission; (2) "No objection to the order of the Commission shall be considered by the Court unless such objection shall have been urged before the Commission in the application for rehearing * * *," which means that all such objections so urged shall be considered by the reviewing Court; (3) "The finding of the Commission as to the *facts*, if supported by substantial evidence, shall be conclusive," or conversely, if not supported by "substantial evidence" cannot stand; (4)

a party, on proper showing, may be permitted by Court order "to adduce additional evidence" before the Commission; (5) in such event, "The Commission may modify its *findings as to the facts* • • • and it shall file with the Court *such modified or new findings*, which if supported by substantial evidence shall be conclusive *and its recommendation*, if any, for the modification or setting aside of the original order;" and (6) "The judgment and decree of the Court, affirming, modifying or setting aside, *in whole or in part*, any such order of the Commission, shall be final • • •" (Sec. 19). Herein in plain language is provided that usual and ample review of rate making orders of administrative agencies, developed and established by long legislative and judicial practice and the undoubted applicable law of the land at the time of the passage of the Natural Gas Act.

6. Moreover, Congress made clear beyond any doubt the limited and specific ambit of the Act. As declared by the Supreme Court in the *Hope Natural Gas Co.* decision, "The Committee Report stated that the *Act* provided 'for regulation along *recognized* and more or less standardized lines' and that there was *'nothing novel in its provisions'* H. Rep. No. 709, supra, p. 3. • • • "Sec. 4 (a) and Sec. 5 (a) contain only conventional standards of rate making for natural gas companies."

7. In view of the terms of the Act and the foregoing quotation from and paraphrase by the Supreme Court of the Congressional Committee Report, it cannot be held, that the duty of a statutory review can be discharged in this case by a mere process of rationalization and a blanket finding that the *ultimate conclusion* of "unreasonableness" (Comm. Order, R. Vol. 1, pp. 94-96) is not arbitrary in its "total effect." It is to be observed that the Commission after making some eleven findings of assumed fact (there are no findings with respect to several material issues) declares "*Therefore* the rates • • • received by Wyoming Company • • • are unjust, unreasonable and excessive." This conclusion ostensibly is *predicated* upon the opinion generally and the so-called findings and conclusions Nos. 1 to 11, inclusive, whether or not supported by the record, and *excludes* issues of material fact with respect to which there are no

real findings either in the order or the opinion of the Commission.

8. The language of the Supreme Court in the *Natural Gas Pipeline Company* and *Hope Natural Gas Company* cases, now relied upon by this Court (Op. Ct., pp. 17-18) does not require or authorize the conclusions announced by this Court. It is said by the Supreme Court, "If the Commission's order, *as applied to the facts before it* and viewed in its entirety, produces no arbitrary result our inquiry is at an end," and "The fact that the *method employed* to reach that result may contain infirmities is not then important." Unless there is to be attributed to the foregoing language the unnatural meaning, that errors of law upon substantial issues and findings and conclusions relating to material and important question of fact not supported by "substantial evidence," may be disregarded in arriving at the so-called "total effect" of the order, then the recognized, established, standardized and orderly judicial review heretofore accorded as of right must be given. This petitioner seeks to have the Commission order reviewed "*as applied to the facts*", and is not complaining about mere infirmity of method but about basically illegal and unlawful action. In short, and in conformity with the Act, *the findings* must *in fact* be supported by "substantial evidence," and the conclusions and order must be in harmony with controlling principles and rules of law. We do not believe the Supreme Court has undertaken to overrule the Congress, yet the generalized construction given to the language of that Court by this Court would indicate directly the contrary. The views of this Court preclude any real consideration of specific issues.

That each case must be decided by the Commission and reviewed by the Court on the facts therein involved, and that the Commission order must stand or fall "as applied to the facts before it," and under the applicable legal controls certainly is the teaching of the *Natural Gas Pipeline Co.* (Pet. Reply Br., p. 23) and *Hope Natural Gas Co. cases* and of all other decisions of that Court. The order, "in its entirety" or in "total effect," must be measured, therefore, by "*the facts*" before the Commission, that is, by the evidence in the record. The Commission may not lawfully

and within the limits of "due process" simply *choose* a rate base, *of any part of a rate base,* but must *from evidence* ascertain and determine (under whatever theory be adopted, be it "fair value," "original cost," or what-not) the true and real rate base in the instant case. In the *Hope Natural Gas Co.* case the Court did not find it necessary to inquire into any of the factual determinations of the Commission. The review was disposed of on questions of law. None of the issues of law or fact presented in this case in this petition for rehearing has been decided adversely to this petitioner in any decision of the Supreme Court.

9. Each of the issues of jurisdiction, "original cost," "accrued depreciation," "going concern," and "allocation" presented in this petition for rehearing involves amounts which are substantial to this small company, presently and from here on out, for each affects the rate base upon which hereafter petitioner is to be allowed a return. If one or more of such substantial issues was decided without evidentiary support or contrary to law, how can it be said the Commission order in "total effect" is not "arbitrary." The order "viewed in its entirety, produces no arbitrary result," *only* when no arbitrary result is present with respect to *any one* of the material and substantial issues of fact or law upon which the order is predicated. Fruit contaminated in part is not and cannot be perfect in its entirety, or even marketable. The whole cannot be greater than all its defective parts. We are told, a house "built upon the sand" is "without a foundation." Despite the fact "that house" may be imposing and attractive, and despite the fact certain of its constituent parts may be well built, yet it is not complete, it is not stable, it is not safe, and it is not acceptable. We are told also "that house" could not stand when put to the test. It "fell," not because of incidental defects or "mere infirmity of method," but as is declared by reason of the absence in fact of the requisite foundation. It was not recorded that this lack of foundation could be or was cured. It was not suggested that the walls, the floors, the ceilings, the roofs, the decorations, and the other what-nots, all having been well built, "the total effect" was a complete, safe, satisfactory and acceptable house "in its entirety." On the contrary, the record is "and it fell; and great was the fall of it."

Neither language nor formula can create essential facts or satisfy basic requirements. So the Supreme Court clearly did use the phrase, "as applied to the facts," advisedly. With facts then, must be laid that foundation, absolutely essential to support the Commission action in this case. This standard and measure, inherent in our very system of government, is a "Rock of Gibraltar" protecting all public and private rights and guarding all against the exercise of unrestrained "discretion" by those in authority. *Stark v. Wickard,* ..... U. S. ....., 64 Sup. Ct. 559, 571. This principle the Court has disregarded. The six line conclusion that the order is supported by the record (Op. Ct., p. 16) is a mere generalization, which we respectfully insist is not predicated upon or sustained by the record, as is evident with respect to several issues from the opinion itself.

True, "the Commission's order does not become suspect" *merely* "by reason of the fact that it is challenged." But, it cannot be purified or rendered valid "in its entirety" or at all by a process of sanctification. It is not sacrosanct. Congress has otherwise ordered and in so doing "has not used meaningless words." The term "arbitrary" is under established law a general expression or conclusion indicating that with respect to one or more specific and material issues the administrative order, measured by the record and controlling law, is not supported by substantial evidence or is contrary to law. Such is the unmistakable measure of review declared in the Natural Gas Act. If this Court be not concerned with particular issues as such, why is the statutory review provided at all, for relief from "confiscation" is still available through courts of equity. Why does the reviewing ambit of the Court include the broad power of "affirming, modifying or setting aside, in whole or in part" the Commission order! Why the repeated reference to "substantial evidence" and to the "findings as to the facts" found in Section 19 (b)! Why is the complete record including all the evidence required for this review! Why is the burden of proof imposed on the Commission if that burden is to be dispensed with directly or indirectly! Why is the review restricted to the specific points presented to the Commission on petition for rehearing before it! Why is the review commandingly directed to "the finding of the Commission *as to the facts*"! What kind of "a day in Court" is emerging from a statute which Congress and the

Supreme Court solemnly declare contains "nothing novel in its provisions!"

The Burden of Proof and the Presumption of Correctness on Review.

We have no controversy with the position of this Court that upon review the order of the Commission "carries with it a presumption of correctness and the burden rests upon him who attacks it on review for want of substantial evidence to *show the absence of such evidence.*" (Op. Ct., p. 16). But the "presumption of correctness" is and remains a presumption, and it cannot supplant or excuse non-performance of any clear judicial duty.

> "That the concurrent findings of two lower courts are persuasive proof in support of their judgments is a rule of wisdom in judicial administration. In reaffirming its importance we mean to pay more than lip service. *But the rule does not relieve us of the task of examining the foundation for findings in a particular case.*" (Emphasis ours.)
>
> *Baumgartner v. United States* (June 12, 1944) ..... U. S. ..... 64 Sup. Ct. 1240.

This Court also recognizes that "in the absence of substantial evidence" the action of the Commission is "the arbitrary exercise of power by administrative fiat and cannot stand" (Op. Ct., p. 15) The burden resting on this petitioner on review "to show the absence of such evidence," in the record, this petitioner meets.

What "evidence" then is it that the petitioner must "show the absence of"? Admittedly the evidence in this record is voluminous, but it is respectfully submitted that this Court has committed grievous error in holding that the ultimate conclusion of unreasonableness "is supported by substantial evidence." All the evidence in this record relates only to specific fact determinations, none to unreasonableness as such A finding of unreasonableness, when justified, is merely the conclusion drawn from *all* determinations of material fact under the applicable rules of law.

The Supreme Court, speaking through *Mr. Justice Frankfurter*, declared in its opinion, in the case above referred to:

"The phrase 'finding of fact' may be a summary characterization of complicated factors of varying significance for judgment. Such a 'finding of fact' may be the ultimate judgment on a mass of details involving not merely an assessment of the trustworthiness of witnesses but other appropriate inferences that may be drawn from the living testimony which elude print. The conclusiveness of a 'finding of fact' depends on the nature of the materials on which the finding is based. The finding even of a so-called 'subsidiary fact' may be a more or less difficult process varying according to the simplicity or subtlety of the type of 'fact' in controversy. *Finding so-called ultimate 'facts' more clearly implies the application of standards of law. And so the 'finding of fact' even if made by two courts may go beyond the determination that should not be set aside here. Though labeled 'finding of fact' it may involve the very basis on which judgment of fallible evidence is to be made.* Thus, the conclusion that may appropriately be drawn from the whole mass of evidence is not always the ascertainment of the kind of 'fact' that precludes consideration by this Court. See, e. g., *Beyer v. LeFevre,* 186 U. S. 114. * * * *Deference properly due to the findings of a lower court does not preclude the review here of such judgments.* This *recognized* scope of appellate review is usually differentiated for review of *ordinary questions* of fact by being called review of a question of law, but that is often *not an illuminating* test and is never self-executing. Suffice it to say that emphasis on the importance of 'clear, unequivocal, and convincing' proof, see *Schneiderman v. United States, supra,* at 125, on which to rest the cancellation of a certificate of naturalization would be lost if the ascertainment by the lower courts whether that exacting standard of proof had been satisfied on the whole record were to be deemed a 'fact' of the same order as all other 'facts,' not open to review here." (Emphasis ours.)

Baumgartner v. United States, supra.

See: *Security Flour Mills Co. v. Comm. Int. Rev.,* ..... U. S. ....., 64 Sup. Ct. 596, 598.

It is not the law that a rate making authority may, by making a finding that certain rates are unreasonable, preclude judicial review of the evidentiary and legal foundations of such finding. If, as we believe, the record abund-

antly discloses, the Commission proceeded without supporting evidence and without warrant of law, no conclusion which the Commission reached upon such improper basis can convert that wrong into right. The review, therefore, as stated by the Supreme Court, must be "applied to the facts" and to the legal controls, not to the ultimate conclusion. This then is the "evidence" that the petitioner must "show the absence of."

It is only after the several specific determinations of material issues of fact have been found to be supported by "substantial evidence" and in conformity with controlling law that the Court reaches the realm of "total effect" or "entirety." Such review of the basic facts and consideration of the governing law, as are disclosed by the opinion to have been made by the Court, do not meet this fundamental test.

While, of course, an administrative order will not be set aside for *mere* error in method or reasoning, yet if the proceeding is permeated with and pervaded by insufficiency of evidence or mistakes of law so that "the end result" so-called is controlled or affected thereby, the order cannot stand. This is the substance of the fully and long established process of judicial review recognized in and provided by the Natural Gas Act, which contains "nothing novel in its provisions." Failure or refusal of the proper reviewing court to conform to this principle of American jurisprudence amounts to nothing less than the abdication of the mandatory judicial function imposed upon it, by law. The Court is not free to cast aside that duty at will.

See: *Addison v Holly Hill Fruit Products, Inc.*, ... U. S. ....., 64 Sup. Ct. 1215, 1223.

The Commission Determination of "Original Cost" is Not the True or Entire Original Cost.

The Commission, *among other things,* eliminated all elements of engineering design and construction from its so-called "original cost" without either consideration or finding with respect thereto (Op. Comm. Vol. I, pp. 52-53, 59; Pet. Main Br., pp. 8-9, 166-171; Reply Br., pp. 27-34). The Court, however, notices and then brushes aside petitioner's objections without regard to relevant facts and controlling law (Op. Ct., p. 20).

The burden admittedly was on the Commission to establish *by evidence* that the rates of petitioner were unreasonable. In arriving at such final conclusion it was necessary for the Commission to ascertain and fix a rate base. This it undertook to do, so it is said, through evidence of "original cost" only.

In passing, it again is pointed out the assertion by the Commission that the difference, sought to be explained by it, between "original cost claimed by the Wyoming Company" * * "and that allowed herein" is only $42,236.00 (Op. Comm. R. Vol. I, p. 59), is not true (Pet. Main Br., pp. 36, 184). The difference is $129,600.00, which would produce an annual return of $7,500.00, a substantial amount to this small company.

The Commission result, after deducting an amount labelled accrued depreciation and certain deductions of alleged customer contributions, and adding working capital and plant additions, was described by the Commission as prudent investment, and adopted by it as the rate base. In this rate base (aside from other eliminations from actual and book costs—Pet. Main Br., pp. 166-184; Reply Br., pp. 27-34) there was included no amount whatever in any form for engineering design and construction. The evidence to this effect is clear and uncontroverted; in fact it was unwillingly given on cross-examination by the Commission witness who prepared and presented the Commission evidence of "original cost" (R. Vol. I, pp. 203, 287-288). It is a fact of common knowledge, of which we assume this Court must take judicial notice, that a natural gas pipe line system does not and cannot spring into existence without engineering design and construction. So here we have an original cost estimate which did not include and which it was deliberately intended should not include, these necessary elements of cost in any amount. These elements of cost were eliminated in their entirety because the service contract under which such essential services were furnished was with an affiliate (Op. Ct., p. 20). The elimination of the contract charge for such services, does not discharge the basic duty still resting upon the Commission to ascertain the entire original cost of the plant of petitioner including these necessary items of cost, whether shown on the books or not, and without which the system could not have been built. To state

"There was no showing satisfactory to the Commission that any engineering services were rendered," is to "ignore realities." *Again we say, the system could not have been built without such engineering services.* Further, the books of the company showed the contract and the payments made thereunder. The presumption is that company expenditures are made honestly and in the exercise of reasonable judgment and that the books of the company are correct (upon which presumption the Commission several times has relied in this record), in the absence of evidence to the contrary (Pet. Main Br., pp. 141-144). Also, there is specific evidence that services were rendered under the contract in question by two qualified engineers (R. Vol. I, pp. 201-202). The Commission does assert authority under Section 6 (a) of the Act to ascertain and determine when necessary in rate cases facts not shown by the records of the company, such as here, the reasonable cost or value of the essential design and construction engineering. *(In the Matter of Chicago District Elect. Generating Corp.*, 39 P. U. R. (N. S.) 263).

It seems, too, as stated by the Supreme Court, "Its rate making function, moreover, involves the making of 'pragmatic adjustments'," that is, practical adjustments of values or consequences to produce equitable results, as indicated by the facts and circumstances of each case.

It is to be observed that all payments upon the service contract with its affiliate, for engineering design and construction aggregating in excess of $83,000.00, were made many years before the passage of the Natural Gas Act, and all but about $5,000.00 thereof (Comm. Ex. 199, p. 7, Tr. Rec.) before the decision (December, 1930) in *Smith v. Illinois Bell Telephone Company,* cited and relied upon by the Court to support the Commission action in "adjusting" all engineering design and construction *out* of its "original cost." That decision is not authority for the denial of engineering design and construction costs. It relates solely and alone to the affiliate contract price therefor. The reasonable cost or value of these essential elements, however determined, remains a part of plant cost or value. In considering the propriety of and the equity requiring "pragmatic adjustments" the Supreme Court in *Los Angeles Gas and Electric Corp. v. Railroad Comm.*, 289 U. S. 287, 307,

53 Sup. Ct. 637, 644, declared, "The time and circumstances of the outlay, and the effect of altered conditions, demand consideration." The meaning of this is that common fairness must be accorded, in the light of the conditions existing when the payments were made. The necessity for such "pragmatic adjustment" is evident for the reason that the so-called original cost rate base adopted and now approved excludes all engineering design and construction and therefore manifestly is incomplete and unfair.

The denial of a reasonable amount, usually fixed by courts and commissions at 5%, the amount stipulated in the service contract in this case, to cover this necessary element of plant cost, plainly is unjust and operates to deny to this petitioner any return thereon, *for all future years* beginning with the effective date of the Commission order (Pet. Main Br., pp. 166-171, Reply Br., pp. 28-30). This result is a substantial deprivation of property, "reached arbitrarily and capriciously." *(See, Penn. Power and Light Co. v. Fed. Power Comm.* (C. C. A. 3), 139 F. (2d) 445, 449.)

In disallowing all charges for essential engineering design and construction, the Commission, and the Court as well, on the face of the record acted arbitrarily and as a matter of law committed error. Such violation of the accepted principles of ordinary fairness cannot be condoned or explained away by mere language or by resort to the protecting aegis of asserted non-confiscatory "total effect."

The Commission Fixation of "Service Life."

The Court in its treatment of "depreciation" (Op. Ct. pp. 26-27) reiterates the words, the assertions, and the contentions of the Commission. However, it fails to accord even passing reference to the basic fact of "service life." The commission, so-called determination thereof is without supporting evidence, as is shown by petitioner to this Court in detail (Pet. Main Br., pp. 42-57, 96, 184-198, Reply Br., pp. 34-39).

The one issue presented here and now, is that the "service life" adopted by the Commission is not supported by evidence. Service life is a fact and can be ascertained only *by evidence*. In the "absence of such evidence" that sub-

stantial and important fact is not established. *The record in this case "shows the absence of such evidence."* It is immaterial, therefore, what type of evidence or method of proof this Court may consider appropriate (Op. Ct. p. 27). There is nothing of probative value in this record as to service life under any theory.

It is not here material or in issue whether "the Commission adopted the service life *principle* for determining annual and accrued depreciation * * *," or that this Court approves that principle. Before that principle can operate it must have a foundation upon which to function. It is essential that the Commission under its burden of proof establish as a fact the service life of the property and system of this petitioner. *As to this both Commission and Court are silent.*

The Commission staff witness who prepared and presented the one-page summary conclusions of "Composite Service Life" (Comm. Ex. 200, R. Vol. III) was offered as an "expert." The testimony of this witness, the sole Commission witness on the subject, was "expert opinion" so-called. This witness testified precisely as stated by the Court in condemning the testimony of a witness for the petitioner on the subject of "going concern value" (Op. Ct., p. 23) "* * * that he did not employ any mathematical formula in arriving at his conclusion as to amount, and he admitted that it was only a judgment figure." The law, however, does not condemn "expert opinion" testimony (Pet. Main Br., pp. 144-147). But under all the authorities the probative value, *if any,* of the ventured "judgment" depends upon the foundations for the conclusions offered, as disclosed by the record. The affirmative disclosures of this record are compelling. The Commission witness in question admitted time after time on cross-examination that his conclusions were nothing more or less than speculative guesses or conjectures (R. Vol. I, pp. 468-503). The Court is respectfully asked again to examine our analysis and consideration of this evidence in our briefs heretofore filed, for the unsupported and therefore illegal determination by one so-called "expert," substantially injures this petitioner.

The conclusion of the Court that "there is no basis in this record on which it can be concluded that the determin-

ation of depreciation adopted by the Commission will result in any of these orders in its entirety causing a failure to restore the capital investment at the end of the term, and therefore no depreciation of property is involved" (Op. Ct., p. 27), is founded in neither fact nor law. As a factual matter the wholly unsupported, arbitrary and grossly inaccurate conclusions of the so-called "expert" are upheld. Such procedure serves to dispense entirely with any review whatever of "the finding of the facts," from which any such conclusion must stem.

If Commission and Court, ignoring the statutory requirements of "substantial evidence" and the burden of proof can thus "conclude," what occasion can there be for any factual evidence whatever on the question. The actual result is that the reviewing Court, declaring itself to be impotent, is powerless to correct any error, no matter how gross. If the Court, as here *without evidence* lawfully can seal the record and declare by way of finality that "in its entirety" the order does not involve deprivation of property, then all review is "gone with the wind." In such fashion the entire question of "service life," from which by mere mathematical computation the so-called "accrued depreciation" of the Commission results, is eliminated from consideration and from this case. The effect, of course, is that the review becomes purely perfunctory and a mere idle gesture. Having banished "the facts before it" and divorced them utterly from the "total effect," so-called, contrary to the mandate of Congress and the quoted declaration of the Supreme Court, there remains nothing to review, for other errors of law similarly are cast "into the outer darkness." And so the right of review expressly granted by the Act (Sec. 19 (b)) is repealed by emasculation, Congress not participating.

"Going Concern."

The discussion by the Court of this subject (Op. Ct., pp. 22-23) is merely an enlargement and along the same vein, as the summary disposition of "going value" by the Commission (Op. Comm. R. Vol. I, p. 68), except that the Court, as of necessity under the law, recognizes and states that "it is an element for appropriate inclusion in the rate base."

The Court in affirming the Commission action disallows it on two grounds, to-wit: (1) "The record fails to *indicate affirmatively* whether the element was *indirectly reflected* to any extent in other items and in the *appraisal* of other properties as part of the assembled whole." But in any event, there is no basis on which to rest the conclusion that the failure of the Commission to *state separately* and add an amount as going concern value overstepped the limits of due process," and (2) The expert witness of petitioner on this subject "stated that he did not employ any mathematical formula in arriving at his conclusion as to amount and he admitted that it was only a judgment figure" (emphasis ours). (Op. Ct., p. 23.)

These conclusions of the Court we will now consider in their order of statement.

The record does "indicate affirmatively" that this "element" is not directly or "indirectly reflected" in any manner or at all in the Commission rate base. And there was no "appraisal of other properties as part of the assembled whole" (Op Ct., p. 23). The evidence so disclosing is uncontroverted and is found in the testimony of Commission witnesses *Vaught* and *Smith* on cross-examination. The witness *Vaught* specifically testified (R. Vol. I, pp. 203, 288, 297-298) that no item of any kind in any amount "covering designing and construction engineering" was included in the Commission evidence of plant and property (Comm. Ex. 199, R. Vol. III). This exhibit (No. 199) included and totaled *only* the book costs of *specific items of property* (the actual cost of some items of property were "adjusted," that is eliminated in whole or in part by the witness). The totals in this exhibit so prepared and received in evidence (Comm. Ex. 199, p. 37, Line 12, R. Vol. III) were adopted as the rate base by Commission witness *Smith* (Comm. Ex. 202. St. 137, p. 10, Line 1, R. Vol. III), and thereafter by the Commission in its order (with certain specific adjustments) as the "original cost" of petitioner's plant and property (Op. Comm. R. Vol. I, p. 59). It cannot be maintained *on this record* that the element of going concern is directly or indirectly reflected in any amount or at all in the Commission rate base. The uncontroverted evidence by the Commission itself is to the contrary. This error, therefore, so readily

liquidated by the Court on the ground that "the failure of the Commission to state separately" that element, did not overstep "the limits of due process," obviously is not liquidated or even disposed of. It is quite impossible "to state separately" the amount of an item or element which deliberately and expressly is excluded "in its totality" from the Commission rate base.

It is not essential to state it "separately," if it may be rationally concluded that going concern was given its proper weight in the overall appraisal. *Per contra* upon affirmative showing as here, that the element was not included in any manner the action of the Commission is purely arbitrary.

Just what weight the Court can attach to its second ground of disallowance of "going concern" is not at all clear. Opinion testimony of an expert is evidence, under the law. The qualifications of petitioner's witness are not and cannot be denied (R. Vol. II, pp. 601-602). This cannot be questioned. But it is said in condemnation that his testimony as to the *amount* of going value *(not the fact,* which the Court concedes) was not based on "mathematical formula" and was "only a judgment figure." True! Necessarily true! And supported by many decisions (Pet. Main Br., pp. 144-147, 203-210; Reply Br., pp. 40-44)! The probative value of such evidence, properly is the subject of inquiry and analysis, however. That the testimony of this witness of petitioner had probative value is not traversed by Commission or Court.

Paradoxically, however, and without inquiry or analysis thereof, the "opinion" testimony of the Commission witnesses on "Service Life", not based on "mathematical formula" and concededly "only a judgment figure," is adopted by the Court without comment, even though all probative value of that testimony is seriously controverted by this petitioner in reliance upon the uncontroverted record testimony of that Commission "expert" himself.

Going concern is a fact, a property right and a part of the property of the petitioner upon which it is entitled to make a fair return (Op. Ct., p. 23). If the amount thereof in dollars, as offered in evidence by the petitioner be ques-

tioned, the duty obviously rested on the Commission under its burden of proof and other well settled rules of orderly procedure, by evidence to controvert the evidence of petitioner. This the Commission failed to do, electing rather to condemn it as a matter of law, on the asserted authority of "this Commission and regulatory agencies in general" (Op. Comm. R. Vol. 1, p. 68), thus to re-make the law.

"Allocation of Cost of Service."

On this topic, also, the Court merely repeats and approves the assumptions and conclusions of the Commission (See Pet. Reply Br., pp. 53-61). It is obvious from the opinion (Op. Ct., pp. 24-26) that the Court made no analysis of "the facts before it" or of the existing principles of law presently requiring and controlling "allocation of property." And here, as elsewhere, the same formula denying review is resorted to, the Court concluding "it cannot be said 'the order' in its totality produces arbitrary results or oversteps the bounds of due process" (Op. Ct., p. 26).

The problem of allocation here involved is by no means a simple one, and "while the difficulty in making an exact apportionment of the *property* is apparent, and extreme nicety is not required, only reasonable measures being essential * * *, it is quite another matter to ignore the actual uses to which the property is put." *(Smith v. Illinois Bell Tel. Co.,* 282 U.S. 133, 150-151, 51 Sup. Ct. 65, 69.) The Court, apparently with approval, states the Commission conclusion "that it did not follow * * * that an allocation of physical property or portions thereof must be made before any excessive returns were determined" (Op. Ct., p. 24). *In fact* the Commission made no allocation whatever of the property of the petitioner or any part thereof either before or after so-called "excessive returns were determined." The Commission in that behalf declared, "All that can be accomplished by an allocation of physical properties can be attained by allocating costs (Note: This alibi is wholly without evidentiary support) *including the return*" (Op. Comm. R. Vol. I, p. 80), and proceeded accordingly. The Commission thus definitely distinguishes "allocation of physical properties" from "allocating costs" and rejecting the former, the law of the land, it sets up its own law of the

case. Such formula, it *asserts* by way of justification is "most practical and businesslike." These Commission statements are mere assertion. Nor are there any findings, merely hand waving conclusions (Op. Comm., pp. 82-83, R. Vol. 1). It cannot be determined by the Court or by anybody else, on this record "other than by sheer acceptance of the Commission conclusion, in the form of its statement of the result and the cryptic formulation" of result, what, if any, are the factual foundations therefor. See *Eastern-Central Assn. v. United States,* ..... U.S. ....., 64 Sup. Ct. 499, 507, and *Alabama Power Co. v. Fed. Power Comm.,* 136 F. (2d) 929. This issue is a matter of such consequence and complexity that no real function of review can be performed without the requisite foundation that has not been made. That the Commission so-called "allocation" does not have "the sanction of law" affirmatively appears, however, as we hereinafter show.

We start then with the admitted fact that there is no "allocation of property" in this case.

Yet this Court apparently overlooks or misconceives the distinction in fact and law between "allocation of property" and "allocation of costs" also described as "allocation of cost of service," for we find in the opinion the following: "The separation may be appropriately effected by estimating or appraising the value of *the property used in the regulated business and that used in the unregulated business. Smith v. Illinois Bell Telephone Company,* 282 U.S. 133" (Op. Ct., p. 25). (Emphasis ours.) Then it is said by the Court, "The separation or allocation may be effected by application of *any formula* which makes the principle a working one suitably adapted to the particular circumstances," citing *Columbus Gas & Fuel Co. v. Public Utilities Commission,* 292 U.S. 398. (Emphasis ours.) If by "any formula" the Court means the Commission lawfully may promulgate, and the Court is at liberty to approve, a formula which discards "allocation of property" and substitutes therefor "allocation of cost of service," the Court is not supported by the *Columbus Gas & Fuel Co. case,* cited by it, or by other controlling decisions.

In the cited case the Court speaking through Mr. Justice Cardoza emphatically held that allocation of property is es-

sential and that any formula omitting such allocation is arbitrary. We quote in full the opinion in that case on the subject of "Allocation":

"Upon the hearings before the commission, the city made the claim that, in the appraisal of the property of the Ohio Fuel Gas Company, the production property should be allocated between Columbus and other municipalities upon the basis of the sales, but that transmission property should be allocated upon the basis of mileage, multiplied by the peak demand at the place of distribution. In opposition, the appellant contended that allocation on the basis of mileage was impracticable, and so the commission unanimously held.

"The opinion of the Supreme Court of Ohio, though giving its approval to the principle of mileage allocation favored by the city, does not furnish us with any formula that would make the principle a working one when applied to the Ohio system. If such a formula can be discovered, it may reduce the price at the Columbus gateway by an amount as yet unknown. Enough for present purposes that it is not discovered yet.

"The formula proposed by the city, and, it seems, sanctioned by the court, would estimate the mileage by starting from a place described as the last point of major compression, and thence proceeding to the town or city where distribution is to be made. In its application to the Ohio system, such a measurement of mileage is unrelated to realities. In the first place, the compressor, wherever situated, is not the source of supply. Gas may have traveled hundreds of miles before the process of compression starts. Conceivably these inequalities might be corrected by the aid of some law of averages. There has been no endeavor to correct them here. In the second place, no one municipality is served by any one compressor unaided by another. The system of transmission maintained by the Ohio Company with its 38 compressors scattered through the state is organized as a unit, and mileage from any single point would be an arbitrary measure of the value of the property devoted to transmission without including in the reckoning the mileage embraced in the system as a whole.

"Nothing to the contrary was held in Wabash Valley Electric Co. v. Young, 287 U. S. 488, 53 S. Ct. 234, 77 L. Ed. 447, or in United Fuel Gas Co. v. Railroad Comm. of Kentucky (D. C.) 13 F. (2d) 510, 522. A municipality may be treated as the unit for determining the rates to be charged to its inhabitants. Wabash Valley Electric Co. v. Young, supra. This does not mean that allocation of values may be made by recourse to an arbitrary formula. *The value of the property devoted to transmission may be measured upon the basis of mileage multiplied by demand.* United Fuel Gas Co. v. Railroad Comm. of Kentucky, supra, where the experts are stated to have agreed upon the method of division. *This does not mean that a like basis will be approved when mileage contributing to the supply is omitted from the reckoning.*" (Emphasis ours.)

Columbus Gas & Fuel Co. v. Pub. Utilities Comm. 292 U. S. 398, 408-410; 54 Sup. Ct. 763, 768-769.

In the *Minnesota Rate Cases,* in which allocation of property was held essential, the Court also directly repudiated the Commission method of "allocating costs including the return "now approved by this Court. The case of *Simpson v. Shepard* has not been overruled. We quote from that opinion:

"*The value of the use, as measured by return, cannot be made the criterion when the return itself is in question.* If the return, as formerly allowed, be taken as the basis, then the validity of the state's reduction would have to be tested by the very rates *which the state denounced as exorbitant.* And, if the return as permitted under the new rates be taken, then the state's action itself reduces the amount of value upon which the fairness of the return is to be computed.

"*When rates are in controversy, it would seem to be necesary to find a basis for a division of the total value of the property independently of revenue,* and this must be found in the use that is made of the property. That is, there should be assigned to each business that proportion of *the total value of the property* which will corres-

pond *to the extent of its employment in that business.* It is said that this is extremely difficult; in particular, because of the necessity for making a division between the passenger and freight business, and the obvious lack of correspondence between ton-miles and passenger-miles. It does not appear, however, that these are the only units available for such a division; and it would seem that, after assigning to the passenger and freight departments respectively, the property *exclusively* used in each, comparable use-units might be found which would afford the basis for a reasonable division with respect to property used in common." (Emphasis ours.)

Simpson v. Shepard, 230 U. S. 352; 33 Sup. Ct. 729, 764-765.

The necessity for *property* allocation likewise is explicit in the case of *Smith v. Illinois Bell Telephone Co., supra:*

"In view of the questions presented in this case, the validity of the order of the state commission can be suitably tested only by an *appropriate determination of the value of the property employed in the intrastate business* and of the compensation receivable for the intrastate service under the rates prescribed. Minnesota Rate Case, 230 U. S. 352, 435, 33 S. Ct. 729, 57 L. Ed. 1511, 48 L.R.A. (N. S.) 1151, Ann. Cas. 1916A, 18. *As to the value of that property*, and as to the revenue and expenses incident to that business, separately considered, there should be specific findings. Railroad Commission v. Maxey, 281 U. S. 82, 83, 50 S. Ct. 228, 74 L. Ed. 717." (Emphasis ours.)

Smith v. Illinois Bell Telephone Co., 282 U. S. 133, 149, 51 Sup. Ct. 65, 69.

It is clear, therefore, that "the requisite separation" may not be made by "an allocation of cost of service," even though it be asserted that "all that can be accomplished by an allocation of physical properties can be obtained" by the Commission made law of so-called "allocation of cost of service."

The underlying "factual" assumptions of the Commission are not relevant or related to this petitioner under any theory of allocation, and are not supported by but contrary

to the record. (Pet. Main Br., pp. 70-77, 212-237; Reply Br., pp. 53-61.) *The Commission allocation is not even premised on the property and operations of this petitioner* (Pet. Main Br. p. 223, Reply Br. 53-61). However, the factual aspect of this issue of allocation the Court disposes of, by indirection, but does not consider, resolve or meet, in its declaration: "* * * The method used by the Commission is said to be erroneous. * * * It may be conceded without deciding that the *method* is not free from defects or imperfections in all its aspects. But * * *" (Note: Then the Court again applied the deprivation of review formula, namely: "total effect.") (Op. Ct., pp. 25-26.)

The controlling legal requirement of "property allocation" is no mere method Nor is "the absence of substantial evidence" a mere defect or imperfection of method. These are fundamental and strip *this* Commission action of all basic validity and legality. It is perfectly obvious that "allocation" reaches the very heart of and controls directly the amount of the order of reduction herein involved. Whatever may be said, the stern fact cannot be dislodged that no order of reduction can stand even with the aid of the fiction of "total effect," if as here neither the basic foundation of facts nor warrant of law is present.

"Due Process."

Commission and Court alike brush aside also all other specifications of error, either without reference thereto or by mere discounting mention thereof (See, Pet. Main Br. pp. 255-270). Such Commission errors no less arbitrary but only less substantial in dollars than those specifically discussed in this petition for rehearing, are fully presented, both on the law and the facts, in our main and reply briefs. The uniformity of the treatment thus accorded all questions on review simply emphasizes the "totality" of the derogation and denial of all right of review as an actual and practical matter.

This case erroneously is treated as a mere incidental matter and scrambled into the Court's determinations of the Canadian River Gas Company and Colorado Interstate Gas Company cases. The issues in this case are separate

and distinct, in fact and in law, from the issues in those cases. As a result of the merging process indulged several material issues herein involved are confused or are completely by-passed in silence. This procedure of the Court operates to deny to this petitioner the fundamental right of due and orderly process. This criticism applies particularly to the issues of jurisdiction, "service life," allocation and due process.

The phrase "due process" is used time after time in the opinion of the Court, but always in connection with a "but," which is interjected as an obstacle to the application of that principle in this case.

"Due process" has been variously and repeatedly defined. In substance and spirit, however, it is the American way of life—the insistence upon fair play, embodied in our ordered and orderly institutions. It was founded in and controlled by principles. Its application was not abandoned to the whim or inclination of instrumentalities or agencies of public power whether created in the recent or distant past. To the courts were delegated the high honor and the solemn duty of protecting all citizens alike, through the application of this transcendently important and glorious concept of government. Congress has not abrogated or infringed upon this essential and salutory safeguard, and has so declared. The question does present itself, however, has any other agency of government attempted so to do! Specifically has the Commission or has the Court undertaken by its action, despite declarations to the contrary, to indulge, sanction or approve findings, conclusions, orders or judgments in this case, which are without warrant of law—and erroneous as a matter of law because not supported by "substantial evidence."

Since judgment is so dependent upon and reflects point of view, judgment uncontrolled by established and declared standards or measures becomes a menace to and destructive of orderly processes of government. Being uncontrolled it becomes fortuitous, that is to say, conditioned upon the viewpoint of that person or tribunal called upon by the accident of circumstance to judge. Congress clearly had this danger in contemplation when enacting the Natural

Gas Act, and particularly with respect to the rate regulatory authority in Sections 4 and 5 and the substantial right of review in Section 19 (b) thereof. The language of the Sections in question, as we have seen, clearly and unmistakably delegates no uncontrolled discretion either to the Commission or the Courts. The Committee Report submitting the Act and recommending its passage was specific that "nothing novel was contained in its provisions." All this can mean nothing other than that the *then* orderly processes of rate regulation and review thereof were intended by the Congress to continue to control both the Commission and the courts of review. Congress imposed the burden of proof upon the Commission, and manifested its intention in terms so clear that "he who runs can read" that "the finding of the facts" must be "supported by substantial evidence" and be in conformity with law if the Commission order is to stand. "The facts before it" and the law of the land measure the validity of the Commission action and the duty of the Court, *now* as before the passage of the Natural Gas Act. Irregularity and invalidity, legality and illegality, right and wrong, cannot be made to mean the same thing by any process of rationalization.

In the very nature of things each issue or question of fact must stand or fall when measured by the evidence, if any, in proof or disproof of that particular issue or question of fact. Moreover, under any theory of clear straight thinking one issue or question of fact cannot be offset against an entirely different and unrelated issue or question of fact. It is also elementary that the absence or insufficiency of evidence to support any particular issue or question of substantial and material fact cannot be condoned or validated by reason of the fact, if it be a fact, that another and independent issue or question of substantial and material fact is supported by "substantial evidence." The same conclusions relate as well to the determination of issues of law. The foregoing statements amount to truisms, but they are truisms which are utterly neglected and discarded by the Court's opinion in this case. "Total effect," unmeasured by material facts or controlling law, is not "due process," even in a "confiscation" case. The salutory principle that it is an error of law to render a decision

predicated upon findings not supported by "substantial evidence" is the law of this case, and binds this court. When facts and law are disregarded private rights (which as well as public rights are entitled to protection under that same law) inevitably are sacrificed under the mere forms of law. Thus the judicial review intended and provided by Congress, the law-maker, in response to Constitutional requirements, is thwarted "in its entirety."

Respectfully submitted,

DONALD C. MCCREERY,
LEE, SHAW and MCCREERY,
WM. A. BRYANS, III,
CHARLES J. KELLY,
Attorneys for Colorado-Wyoming Gas Company, Petitioner.

Order Denying Petition for Rehearing.

Forty-third Day, May Term, Wednesday, August 9th, A. D. 1944. Before Honorable Sam G. Bratton, Honorable Walter A. Huxman and Honorable Alfred P. Murrah, Circuit Judges.

This cause came on to be heard on the petition of petitioner for a rehearing herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that the said petition be and the same is hereby denied.

Stay Order.

Forty-fourth Day, May Term, Monday, August 14th, A. D. 1944. Before Honorable Orie L. Phillips, Circuit Judge.

This matter coming on for hearing this day on application of petitioner for a further continuance of the stay order and a further stay of issuance of the mandate, and it appearing that petition for rehearing filed in this cause on July 26, 1944, was denied on August 9, 1944,

It is now here ordered that the stay order entered herein on May 16, 1942 (and continued by further order of July 8, 1944), on the terms and conditions therein set forth, be and the same is hereby continued in full force and effect to and including October 15, 1944, and if within said period a petition for certiorari is filed in the Supreme Court of the United States and a certificate thereof is filed in this court within said period pursuant to rule 28 of this court, then said stay order shall continue in full force and effect until final disposition of said cause by the Supreme Court of the United States. It is further ordered that the issuance of the mandate is hereby stayed for the period up to and including October 15, 1944, and if within said period a petition for certiorari shall be filed in the Supreme Court of the United States, with due certificate as aforesaid, then issuance of the mandate shall be stayed until final disposition of the said cause by the Supreme Court of the United States.

Clerk's Certificate.

United States Circuit Court of Appeals, Tenth Circuit.

I, Robert B. Cartwright, Clerk of the United States Circuit Court of Appeals for the Tenth Circuit, do hereby certify the foregoing, consisting of three volumes, as a full, true, and complete copy of the designated transcript of the record from the Federal Power Commission, and full, true, and complete copies of certain pleadings, record entries and proceedings, including the opinion (except full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States) had and filed in the United States Circuit Court of Appeals for the Tenth Circuit in a certain cause in said United States Circuit Court of Appeals, No. 2561, wherein Colorado-Wyoming Gas Company, a corporation, was petitioner, and Federal Power Commission et al. were respondents, as full, true, and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit, at my office in Denver, Colorado, this 25th day of August, A. D. 1944.

(Seal, U. S. Circuit Court of Appeals, Tenth Circuit.)

ROBERT B. CARTWRIGHT,
Clerk of the United States Circuit Court of Appeals, Tenth Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 13, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted, limited to the seventh question presented by the petition for the writ. The case is transferred to the summary docket and assigned for argument immediately following Nos. 379-380.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

APPENDIX.

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DEPOSITION OF CHRISTY PAYNE, OCTOBER 22, 1940
1

* * * * *

A. From 1920 until July 1, 1933, I was in charge of the natural gas interests of Standard Oil Company, a New Jersey corporation—hereinafter referred to as "Standard Oil"—and was associated with Colorado Interstate Gas Company—hereinafter referred to as "Colorado Interstate"—from the beginning, being its first President.

The Company was incorporated under the laws of Delaware June 8, 1927. It was a part of a project organized for the purpose of selling in Colorado natural gas which would be produced in Texas in the gas field known as the Amarillo or Panhandle field.

As finally developed, Colorado Interstate constructed a pipe-line from a location near Clayton, New Mexico, to the vicinity of Denver, with certain lateral lines extending from the main pipe-line. I understand that a physical description of the line will be given by other witnesses.

At Clayton there is a connection with the pipe-line of Canadian River Gas Company—hereinafter referred to as "Canadian River"—which Company produces the gas and delivers it to Colorado Interstate at Clayton.

The possibility of Standard Oil participating in this natural gas pipe-line enterprise was first brought to our attention in 1926 by officials of Southwestern Development Company.

Leases on large blocks of acreage in the Panhandle field, upon which approximately twenty gas wells had been drilled, were held by a subsidiary of Southwestern Development Company.

We were advised that Denver and other points in Colorado seemed to offer the best available markets to be served from these gas reserves, and that there was considerable

public agitation in the City of Denver looking toward the substitution of natural gas for the manufactured gas then being supplied consumers in that City.

Public Service Company of Colorado, a subsidiary of Cities Service Company, had distributed manufactured gas in Denver for a number of years. On February 8, 1927, a new franchise was granted Public Service Company by a majority vote of the qualified electors.

This franchise contained a provision looking toward the bringing of natural gas to Denver. Public Service Company was obligated to make a supply of natural gas available to the City if the Mayor and Council of the City, after investigation and upon competent engineering advice and taking into consideration all the economic factors involved, should determine that a natural gas supply for Denver was feasible.

A penalty of Fifty Thousand Dollars ($50,000.00) per year was provided for if Public Service Company defaulted in carrying out the terms of that provision.

This indicated to us that the City of Denver was earnestly seeking a natural gas supply for its citizens, and on the basis of that we actively carried on the work necessary to the development of the project.

During 1926, after preliminary negotiations with Southwestern Development Company, a tentative understanding had been reached on the purchase price to be paid for the leases, wells and gas reserves which were to constitute the gas supply. It was expected that the financing of the project would be undertaken by Standard Oil, and that Southwestern Development Company and Standard Oil each were to have an equal stock position in the Company.

During 1926, some negotiations had been carried on with representatives of Public Service Company, but it was not until after the approval of the franchise by the voters of Denver that we were in position to conclude an agreement among the interested parties. This was done, and under date of April 5, 1927, an agreement was entered into by Southwestern Development Company, Cities Service Company and Standard Oil Company, a New Jersey corporation.

A copy of this contract has been introduced as an exhibit in this proceeding, numbered Exhibit 1. This agreement of April 5, 1927, was the culmination of the negotiations which began in 1926 and were continued with considerable activity after February 8, 1927.

The terms were agreed upon only after a series of conferences at which various plans were considered and the viewpoints of all the parties were put forward and thoroughly discussed. Since Standard Oil was assuming the responsibility of putting up the money for the project, we exercised the utmost care and our best judgment in all of the matters under consideration, and the willingness of the Company to proceed with this project depended entirely upon the basis agreed to by the parties.

The investigations which had been made at my request clearly disclosed that it was not economically possible to bring gas to Denver solely for the domestic and ordinary commercial business there available.

At Pueblo was a large steel plant of the Colorado Fuel & Iron Company offering the possibility of a large industrial load. It was necessary to obtain this business in competition with the fuel then being used, and both this load and the Denver load were indispensable to the project.

We expected to take on certain other business that our investigations indicated was there, including the Cities of Colorado Springs and Pueblo, and certain industrial customers. These additional industrial contracts were to be subject to the prior call of Denver on the gas reserves of the project.

During the summer of 1927, a number of conferences were held with the Mayor and other officials of the City of Denver. A letter proposal embodying the general principles under which gas would be sold to Public Service Company was written to that Company under date of June 8, 1927, by Colorado Interstate and that formed the basis of the negotiations with the City officials.

This proposal provided that details were to be worked out in a contract to be prepared later. It was a matter of great public interest and intense application on the part of all parties.

The City had employed A. C. King, a consulting engineer, of Chicago, Illinois, to advise it on all factors of the matter, and Mr. King made an independent investigation and made a formal report dated August 10, 1927, on the project. I understand this report will be made a part of the record in this proceeding.

After many discussions and conferences with the representatives of the City of Denver, the rate at which gas was to be sold to Public Service Company was agreed upon at forty cents per mcf for domestic gas.

An ordinance was passed by the City Council on September 14, 1927, making a formal declaration of the feasibility of bringing natural gas to Denver and fixing the rates which were to be charged by Public Service Company for gas distributed by it.

These rates were based upon the payment by Public Service Company of a gate rate of forty cents per mcf for domestic gas. The passage of this ordinance completed the action of the City with respect to the bringing of natural gas to Denver, and we then entered into the work of drafting a contract for the sale of gas and for the construction of the line.

The contract with Public Service Company was finally executed in June, 1928, although dated as of January 3, 1928. At this time Colorado Interstate had not been engaged in the gas business and was under no obligation to enter or carry on that business except upon terms and conditions satisfactory to it.

(Vol. 1, pp. 30-35.)

Agreement of April 3, 1927.
(Offered in evidence by Canadian River Gas Co. and Colorado Interstate Gas Co.)

New York, N. Y., April 5th, 1927.

Memorandum of Stipulations agreed upon between Southwestern Development Company, Cities Service Company and Standard Oil Company (New Jersey).

I. The project in general contemplates the acquisition of natural gas properties in the Amarillo Gas Field, the construction of a pipe line from that field to the city of Denver via Pueblo and Colorado Springs with branches to Canon City and other places, the sale and delivery of natural gas at the city gate for distribution in said cities and in other places and the sale of natural gas for industrial purposes to industries along the route of the pipe line.

II. The plan of the project as herein set forth is to be carried out only upon the condition that the attorneys for the parties advise favorably upon the legality under Federal Laws and the laws of the several States where the business is located, and the plan may be modified by some alternative plan which meets with the approval of the attorneys and substantially conforms to the plan herein stated. One corporation instead of two may be created or used hereunder in the State of Texas to fulfill the functions hereinafter assigned to two corporations.

III. The Southwestern Development Company is the owner of all of the capital stock of the Amarillo Oil Company which is the owner of a large area of gas leaseholds, gas wells and other gas properties located in the counties of Hartley, Oldham, Moore, Potter, Hutchinson and Carson, State of Texas. The Southwestern Development Company agrees to form and hold the stock of a corporation which will be and continue separate from its other projects now operating or which may hereafter operate in said counties and will cause the Amarillo Oil Company to convey to said new company, hereinafter designated as the Texas Producing Company (free from all debts, liens and encumbrances) all its gas leaseholds, gas fee and gas wells and equipment, including pipe lines.

The Southwestern Development Company also agrees to cause said Texas Producing Company to enter into a contract to operate its wells and gas properties so as to produce therefrom the amount of natural gas required by the project except to the extent that natural gas required by the project may be purchased from others. It will also cause the Texas Producing Company to sell its gas production at cost and so far as is practicable to hold its areas of gas lands as a blocked up reserve during the time the gas of other producers can be profitably purchased.

It is agreed, however, that it is necessary that the Texas Producing Company sell to the project at all times sufficient gas produced from its own wells, which together with the gas sold to the Panhandle Pipe Line Company and Amarillo Oil Company under the contracts herein provided for, will enable the Texas Producing Company to comply with the terms of its leases and to offset gas taken by others in competitive areas, and the Southwestern Development Company agrees to cause the Amarillo Oil Company and Panhandle Pipe Line Company each to purchase and take from the Texas Producing Company at all times as nearly as may be practicable the same proportion of their total requirements of gas as the amount taken by the project from the wells of the Texas Producing Company bears to the total amount of the gas requirements of the project.

It is agreed that Southwestern Development Company shall cause the Texas Producing Company and the Panhandle Pipe Line Company and Amarillo Oil Company to enter into a contract whereby the Texas Producing Company shall sell and the Panhandle Pipe Line Company and/or the Amarillo Gas Company shall purchase the natural gas required to supply the customers of the Panhandle Pipe Line Company and the Amarillo Gas Company in the city of Amarillo and its environs, and to supply the Amarillo Oil Company with gas for sale to the Smelter Company which is now being supplied by it, and any consumers which it may hereafter acquire located in the city of Amarillo or its environs and the gas supplied under this contract is to have preference over the gas supplied to the project.

It is agreed also that the price to be paid for each one thousand (1,000) cubic feet of said gas deliverable to said

Panhandle Pipe Line Company and/or the Amarillo Oil Company shall be the actual cost per M cubic feet to said Texas Producing Company including in said costs maintenance and operating expenses, rentals and royalties, maintenance of funds or reserves for renewals, replacements or extraordinary maintenance not covered by expenditures for current operation or ordinary maintenance, taxes excepting net income or net profits taxes, general expense, bond interest and sinking fund requirements, development costs, a fair allowance for contingencies, and the expense of purchasing and procuring gas if any is purchased by said Texas Producing Company from other producers of gas; such costs are to be computed on all gas sold by said Texas Producing Company and an average price per M cubic feet so ascertained, the method for fixing the same to be carefully worked out and set forth in the agreement hereafter to be made pursuant to these stipulations except that from the time that the method herein defined for computing the cost of gas to the Panhandle Pipe Line Company and Amarillo Oil Company goes into effect until the time when the project begins taking gas from the Texas Producing Company there shall be included as a part of the cost of gas, the interest accruing on one-fourth of any bonds issued by the Texas Producing Company, but the cost of any wells drilled by the Texas Producing Company which are not necessary to supply gas for the requirements of the Panhandle Pipe Line Company and Amarillo Oil Company, shall not be taken into account in determining the cost of gas to them, nor shall sinking fund payments on bonds of Texas Producing Company commence during such period.

IV. The Southwestern Development Company also agrees to cause to be incorporated and to hold the stock of a company hereinafter designated as the Texas Connecting Company which shall build a pipe line of adequate capacity and equipment, including compressors and branch lines, for the gathering and transporting of natural gas from the Amarillo Gas Field in said counties to a junction point in Oklahoma or New Mexico near the northwest corner of the Texas Panhandle where its pipe line will connect with and make deliveries of natural gas to the project.

The Southwestern Development Company agrees to cause said Texas Connecting Company to enter into a contract with the Texas Producing Company to purchase the gas production of the latter company and to purchase gas from other producers when the same may be profitably acquired and to sell and deliver the same to the project at the cost thereof. Said Texas Connecting Company shall also build and operate a plant for the extraction of gasoline from the natural gas transported, and treat therein and have the recovered product therefrom, the net profits therefrom to be credited upon the cost chargeable against the Colorado Company for the natural gas sold and delivered to it.

V. The Texas Producing Company and the Texas Connecting Company shall not make any contract for the sale of natural gas nor do anything that may impair the capacity of each to fulfill its deliveries of natural gas hereunder for the full term of the agreement to be made in accordance with these stipulations. (Contract with the Amarillo Oil Company and/or Panhandle Pipe Line Company to be expressly accepted as a preferred obligation as hereinbefore provided.) In case profitable sale of natural gas may be made with the consent of the Colorado Company to others than the project, the net profits shall be paid to or credited upon the cost of gas chargeable to the Colorado Company hereunder as if such sales had been made for the Colorado Company's account, and subject to this provision, the Texas Producing Company is to co-operate with the Amarillo Oil Company and/or Panhandle Pipe Line Company in the sale of gas to them for delivery to additional customers in northwestern Texas, known as the Panhandle of Texas, and in making gas from the Amarillo Gas Field in said counties available on reasonable terms to such customers.

VI. For the purpose of defining the respective operating rights of the Amarillo Oil Company, which retains the ownership of the fee oil and the leasehold oil, and on the other hand the Texas Producing Company which becomes the owner of the fee gas and leasehold gas in the same lands, a working agreement shall be entered into under the usual terms customary in oil and gas fields whereby gas wells drilled by the oil owners may be purchased at cost by the owner of the leasehold gas and oil wells drilled by the owner of the leasehold gas may be purchased at

cost by the owner of the leasehold oil, and rental obligations may be shared. Said working agreement to grant an option to the project at cost upon any gas which may be developed in the counties of Hartley, Oldham, Moore, Potter, Hutchinson and Carson, State of Texas by the Amarillo Oil Company.

VII. Standard Oil Company (New Jersey) agrees to form a corporation, hereinafter designated "The Colorado Company", and to cause the stock of the Colorado Company to be issued to the companies in the amounts hereinafter set forth. Said Colorado Company shall construct a pipe line of adequate capacity and equipment, including branch lines, and main line to extend from a connection with the pipe line of the Texas Connecting Company and follow a route via or near Pueblo and Colorado Springs to Denver, with a branch line to Canon City and a branch line to each of such other places as may be made a part of the project. Said Colorado Company shall enter into a contract with the Texas Connecting Company to purchase gas at cost from the Texas Connecting Company for the natural gas requirements of its customers and to enter into a contract with the Public Service Company of Colorado for the delivery of gas to Denver and its environs, a contract with the Pueblo Gas & Fuel Company for Pueblo and its environs, and a contract with Cities Service Company or its nominee for delivery of gas for distribution in Colorado Springs, Ivywild and their environs if Cities Service Company succeeds in buying the distribution plants in the last two named places; if such purchase is not made, then the Colorado Company shall negotiate and endeavor to make a contract with the owners of said plants in Colorado Springs and Ivywild and environs.

VIII. In view of the possibility of gas being found along the pipe line of the Colorado Company or within piping distance of the market then being supplied by it, the parties agree that it may be desirable for the protection of the money then invested in the project and/or the plants of the distributing companies to arrange for purchase of such gas by the Colorado Company and the marketing of such gas while the gas of the Texas Producing Company is reserved for the future. It is understood that the distribu-

tion companies controlled by Cities Service Company are to use their best efforts to co-operate with the Colorado Company in the disposal of such gas. Upon failure of the Colorado Company to purchase or dispose of any such gas or to participate in the purchase or disposal thereof, then the distributing companies controlled by Cities Service Company shall have the right to purchase and market that part of such gas which if such purchase were not made would be offered for sale to customers of distributing companies. Otherwise, the distribution companies controlled by Cities Service Company are to purchase all of their natural gas requirements from the Colorado Company, and the Colorado Company to purchase all of its requirements from the Texas Connecting Company, and the Texas Connecting Company from the Texas Producing Company and other producers of gas in the Amarillo Field, deliverable as heretofore set forth.

IX. The contract between the Texas Producing Company and the Texas Connecting Company and the contract between the Texas Connecting Company and the Colorado Company and the contract between the Colorado Company and the distributing companies in Denver and Pueblo owned or controlled by Cities Service Company, and the contract between the Colorado Company and Cities Service Company for delivery of gas for use in Colorado Springs and Ivywild if Cities Service Company should acquire the plants now being operated in said two last named cities by the municipalities, shall all be for a term of twenty years from and after the execution of the first one thereof and so long thereafter as natural gas may be profitably sold by the Colorado Company after payment of the cost thereof to the Texas Connecting Company as herein provided.

X. It is agreed between the parties hereto that on the signing of the agreement contemplated under these stipulations, an engineering firm such as Ford, Bacon & Davis, Inc., or similarly equipped engineers, shall be engaged by the Texas Producing Company, the Texas Connecting Company and the Colorado Company (Christy Payne being hereby authorized to act for them in this particular until incorporated if any such action is expedient) to construct the pipe lines and stations and to operate all properties under

engineering and/or construction contracts, during a period of twenty years, terminable, however, by the engineers or by the employing companies at the end of five years provided one year's notice has been given or at any time thereafter on one year's notice; the Colorado Company to name other engineers in place of those retired for the remaining term under contracts terminable on one year's notice. Remuneration for said engineering operation and management to be prorated in the proportion that the investment of each company bears to the total investment.

XI. The Colorado Company reserves to itself for direct service the sales of gas to the steel plant of the Colorado Fuel & Iron Company in or near Pueblo and to the cement and zinc smelter refineries, ore reduction plants and other industries in and along the railroad to Canon City, and to any other large industries located along the route of its main and branch lines and not located in or abutting on the low or intermediate pressure distribution plants maintained in Denver, Pueblo, Colorado Springs, and the other places which may be supplied under contract for delivery of gas by the Colorado Company at the city gate.

XII. Cities Service Company agrees to cause the Public Service Company of Colorado to convert its artificial gas distribution plant in the city of Denver and environs into a natural gas distribution plant and to cause the Pueblo Gas & Fuel Company to convert its artificial gas plant now operated by it in the City of Pueblo into a natural gas distribution plant. It is understood also that Cities Service Company is negotiating for the purchase of the plant or the capital stock of the Colorado Springs Light, Heat & Power Company now operated by the City of Colorado Springs, an artificial gas company supplying Colorado Springs and Ivywild and environs, and that if said purchase is consummated it will cause the company making such purchase to convert said artificial gas plant into a natural gas distribution plant. Said Cities Service Company also agrees to cause the Public Service Company of Colorado, the Pueblo Gas & Fuel Company and the company distributing gas in Colorado Springs and Ivywild, if such plants are secured by it, to enter into contracts with the Colorado Company to purchase and take from the

Colorado Company all of the natural gas required by said distribution plants for the supply of their consumers, which contracts shall contain the usual provisions for the purchase and taking of natural gas and its distribution and in addition substantially the following provisions:

(a) During the first fifteen years after the Colorado Company is ready to make deliveries, the city gate price which the distribution company shall pay the Colorado Company for gas purchased and taken shall be forty (40) cents per thousand cubic feet. Gas may also be purchased from the Colorado Company for sale under special industrial contracts, which special contracts have been submitted to and approved by the Colorado Company, at eighty five per cent. (85%) of the price charged by the distribution company to such industrial consumers under such approved contracts.

It is provided, however, that six months before the beginning of the eleventh year of the above agreed first fifteen year period, if the Colorado Company finds that its cost of obtaining natural gas has increased on the average per thousand cubic feet during the first six months of said tenth year over the cost of obtaining gas during the sixth, seventh and eighth years, then it shall bring such increased cost to the attention of said distribution companies, and an adjustment of said rates shall be made if the parties are then able to agree mutually upon the amount of such increase; if not able to fix such increase by mutual agreement, then said prices shall remain unchanged for said entire period of fifteen years. After the said period of the first fifteen years, the prices in effect at the end of said first fifteen year period are to continue as basic prices, but if the Colorado Company by reason of an increase in the cost of producing and obtaining natural gas is obliged to pay an increased price for its supply of gas for the purposes of the agreement or agreements made under this stipulation over and above the average price paid during the eleventh to fifteenth years inclusive, then it may on six months' written notice, increase said prices to the same extent. In the event such increased prices are not acceptable to said distribution companies, the increase under the facts above set forth shall be arbitrated.

(b) The distribution companies shall adopt and endeavor to secure in the cities served a schedule of rates which will tend to stimulate sales of natural gas for house heating as well as for cooking, laundry work and hot water heating, all parties to co-operate in the effort to secure satisfactory rate schedules in each city served.

(c) Each distribution company shall make every reasonable effort to increase and build up sales of natural gas in such towns and engage and pay for the service of the Natural Gas Department of H. L. Doherty & Company to direct such efforts, doing among other things, to the extent such Department deems advisable, the following:

1. Attaching any and all new consumers abutting on existing lines and extending present distribution systems throughout any sections where profitable consumers may be secured.

2. Introduction of and demonstrations of the workings and benefits of proper burners and appliances designed for the use of natural gas. Demonstration and sale of natural gas heating and other natural gas appliances at convenient point or points where public interest may be attracted and secured, and sale of such appliances at fair prices and on reasonable terms of payment, and on installment terms of payment when consumer desires, if found necessary to stimulate sales of gas.

3. Advertising the advantages of natural gas in local papers, distribution of pamphlets to interest and educate the public in the use of natural gas, and the holding of frequent educational campaigns and natural gas demonstrations together with personal solicitations.

4. Making a thorough survey of the commercial and industrial sales possibilities; instituting schedules of rates to attract the major portion of this business; making extensions of low pressure or city high pressure lines as may be necessary to meet the requirements of these classes of consumers.

5. To make available for the purpose of increasing sales of natural gas the following minimum expenditures for the use of the sales department:

1st year, an amount equal to $2.00 per consumer then attached to lines.

2nd year, an amount equal to $1.50 per consumer then attached to lines.

3rd year, an amount equal to $1.00 per consumer then attached to lines.

4th year, an amount equal to $ .75 per consumer then attached to lines.

5th year, an amount equal to $ .50 per consumer then attached to lines.

(d) Cities Service Company agrees to cause the Public Service Company of Colorado and the Pueblo Gas & Fuel Company, and such company as it may organize to operate the distribution plant in the city of Colorado Springs and Ivywild, if purchased by Cities Service Company, to make such additions and changes in the distribution plant in each city operated respectively by them as will insure so far as the capacity of the distribution plant will do so an adequate and uniform pressure of natural gas throughout each city and its environs in keeping with good practice in cities where natural gas is supplied for house heating as well as other domestic purposes. Such additions and changes shall be completed and in operation at the time the Colorado Company is ready to commence deliveries of natural gas hereunder, and shall be so constructed that a pressure of thirty pounds gauge to the square inch at each of the Colorado Company's delivery points will give uniform and adequate pressure throughout each distribution plant.

(e) In any of said contracts it is to be stipulated that the demands of domestic consumers upon the supply of natural gas are to be preferred over service to industrial consumers and that the remainder may be prorated, after demands of domestic consumers, among commercial and industrial consumers, but that such domestic preference shall not be exercised so as to deprive the Colorado Fuel & Iron Company of the volume of gas needed to complete open hearth heats then in jeopardy and to keep its furnaces warm during extreme domestic demand upon the pipe line of the Colorado Company, or so as to deprive any

other industrial consumer which requires a small proportion of its normal gas demand to prevent damage to its appliances.

(f) The gas deliverable at the city gate of each distribution plant shall be measured by orifice meter or other meter of standard type and equally accurate. The unit of measurement shall be one thousand cubic feet of natural gas at an assumed temperature of 60 degrees F. and an assumed pressure of eight ounces above 12.7 pounds atmospheric pressure computed according to Boyle's Law relating to gas measured at varying pressures, but without allowance for variations of barometer, the specific gravity of the gas to be ascertained each three months and the average temperature determined and used in the computations. The delivering company to furnish, maintain and read the meters and the receiving company to have the right to install check meter or meters of standard and accurate grade with duplicate installation and daily or frequent checking comparisons of readings.

In order to keep account of the gas sold to domestic consumers and paid for at one rate, and gas sold for industrial purposes and paid for at another rate, the amount of natural gas used by the distributing company in any of its power plant or plants and the amount consumed by the distribution company's industrial special rate consumers, shall be deducted from the total amount registered by the Colorado Company's meter at such delivery point and the difference between these two amounts shall be considered the amount of gas delivered by the Colorado Company to the distribution company for the purpose of supplying the distribution company's domestic consumers.

(g) Cities Service Company agrees to use its best endeavors to promptly obtain suitable franchise and rate ordinances for the sale of natural gas in Denver and Pueblo, and in any other city, including Colorado Springs and Ivywild, in which it may install or acquire the distribution plant, and so far as is practicable to secure rate ordinances to cover not less than a fifteen year term.

It is agreed that the parties hereto are to give the Cities Service Company opportunity to purchase the artificial gas plants in the City of Colorado Springs and Ivywild and

secure a franchise for natural gas and a rate ordinance therein, but if the Cities Service Company is unsuccessful in its attempt to purchase said plants, its right to have first opportunity shall expire three months after the Colorado Company's line is in operation. It is also agreed that if there are other cities and towns which the Colorado Company believes to be available markets, it shall from time to time give the Cities Service Company thirty days' notice and opportunity to investigate each of such towns and cities; if the Cities Service Company upon such investigation desires to install a natural gas distribution plant therein it shall within said thirty days give notice of such conclusion and shall have first opportunity for a period of three months thereafter in which to secure a franchise and rate ordinance.

XIII. It is agreed that out of the money raised for the project, the Colorado Company is to pay to the Southwestern Development Company through the purchase of bonds of the Texas Producing Company and the Texas Connecting Company as set forth in these stipulations and the financial statement attached hereto, Five Million Dollars ($5,000,000) in cash and is to deliver to the Texas Connecting Company fifty (50) per cent. of its common stock (after deducting from the total common stock any shares allotted under stock warrants with bonds and the shares to the extent of fifteen (15) per cent. of the total original issue allotted to Cities Service Company), and One Million Dollars ($1,000,000) par value of its preferred stock, in consideration of the obligations assumed by it hereunder to produce and deliver gas, supported by the wells, gas leaseholds and fee gas to be acquired by the Texas Producing Company and the pipe lines and facilities to be constructed by the Texas Connecting Company, free from any liens, debts or encumbrances.

XIV. In the obligations hereinbefore set forth upon the Texas Producing Company to sell gas to the Texas Connecting Company and the Texas Connecting Company to buy from the Texas Producing Company, and the Texas Connecting Company to sell to the Colorado Company and the Colorado Company to buy from the Texas Connecting Company, at cost, it is agreed that such cost shall include all money expended in producing, purchasing and transporting gas to the place of measurement and delivery, with payments made monthly upon monthly cost estimates with

semi-annual adjustments to meet six months' actual costs, including in such costs maintaining and operating expenses, rentals and royalties, maintenance of funds or reserves for renewals, replacements or extraordinary maintenance not covered by expenditures for current operations or ordinary maintenance, taxes excepting net income or net profits taxes, general expense, bond interest and sinking fund requirements, development costs, a fair allowance for contingencies and the expense of purchasing and procuring gas if any is purchased from other producers of gas, but there shall not be included in the cost of gas sold to the Texas Connecting Company and/or the Colorado Company any rentals on leases from which the Colorado Company has relinquished its right to have the gas production delivered for the project and has given notice of such relinquishment. In the event the Texas Producing Company and the Texas Connecting Company have profits from any source and accumulate a surplus in excess of working capital requirements there shall be a reduction in the price of gas until such excess is used up.

XV. Southwestern Development Company agrees that it will not permit the Amarillo Oil Company to incur any obligations on its natural gas properties described herein, other than in the natural course of the current and normal operations under existing contracts, or to dispose of any part of its properties during the period of the negotiation for franchise and rate ordinance for natural gas in the City of Denver and if an acceptable franchise and rate ordinance is secured, then continuing until the gas wells and gas fee and gas leaseholders are vested in the Texas Producing Company as herein provided.

XVI. All parties hereto agree upon the execution of these stipulations to proceed diligently to the preparation and execution of formal agreements substantially on the terms of these stipulations. Upon the execution of said agreements it is agreed that Cities Service Company will cause the Public Service Company of Colorado to use its best efforts to secure a franchise and rate ordinance for the distribution of natural gas in the city of Denver and in the city of Pueblo. On securing such natural gas franchise and rate ordinances on terms which make the project profitably feasible in the judgment of the parties hereto,

the obligations of the parties hereunder shall immediately become effective and the financing and constructon program proceeded with diligently.

It is agreed that a schedule and form of rates in the city of Denver substantially as follows contained in a reasonably workable ordinance duly enacted, shall be deemed to make the project profitably feasible and the agreement immediately effective:

$2.00 for the first 1,000 cubic feet or less
.60 per thousand cubic feet for the next 9,000 cubic feet
.50 per thousand cubic feet for all over 10,000 cubic feet

In case an acceptable rate ordinance is not secured in the city of Denver on or before the 1st day of July, 1927, the parties hereto or any of them may terminate participation herein and cancel any agreements made hereunder, each party thereupon to be free and without prejudice to act as if these stipulations and any agreements thereunder had never been made.

XVII. The Colorado Company shall have free access during the term of these stipulations and any agreements made hereunder, to all property and to the financial and corporate data and records, reports, books of account, operating and financial data, audits completed or in progress, and all facts and data including well logs, records and maps having any relevancy to the project, of the following companies, viz., the Texas Connecting Company, the Texas Producing Company, Amarillo Oil Company, Panhandle Pipe Line Company, Southwestern Development Company, and any and all subsidiaries, associate or distribution companies, distributing natural gas deliverable under these stipulations or any and all agreements which may be made pursuant to any contracts which may be entered into pursuant hereto.

XVIII. To provide the final funds for the project, it is agreed that the Colorado Company will issue its Twenty Year, Six Per Cent. Sinking Fund Gold Bonds, in such amounts and under such sinking fund conditions as it may find expedient, and with detachable stock warrants at a rate not to exceed ten shares for each One Thousand Dollar ($1,000) bond of the original issue, and at a price not less

than Fifteen Dollars ($15.00) per share, if deemed necessary to make the bonds marketable, warrants to expire if not taken up on or before the 1st day of July 1930; said bonds shall be secured by issuing to a Trust Company, Trustee, to be selected by the Colorado Company, a first mortgage and/or deed of trust conveying to such Trustee its pipe lines and other facilities and in addition such bonds shall be secured by pledge of the bonds of the Texas Connecting Company and the Texas Producing Company purchased and owned by the Colorado Company as hereinafter provided, by pledge of the gas purchase contract with the Texas Connecting Company by pledge of the assignment of the gas purchase contract between the Texas Connecting Company and the Texas Producing Company and by pledge of the contracts of the Colorado Company with distributors in the cities served.

The Texas Connecting Company and the Texas Producing Company will also each issue its Twenty Year Six Per Cent. Sinking Fund Gold Bonds in such amount and under such sinking fund condition as may be determined, for the cost of construction and cost of acquisition of properties, the bonds of the Texas Producing Company to include Five Million Dollars ($5,000,000) for purchase of fee gas, leasehold gas and gas wells of the Amarillo Oil Company, which bonds will be bought at par by the Colorado Company and will be secured by issuing to a Trust Company, Trustee, a first mortgage and/or deed of trust conveying said properties. The Texas Producing Company will also assign as security its contract with the Texas Connecting Company and the Texas Connecting Company will also assign as security to the Colorado Company its contracts with the Texas Producing Company and others for gas and such assignments and contracts may be pledged also under the Colorado Company mortgage.

In addition to said bonds, the Colorado Company is to issue—

(a) To Standard Oil Company (New Jersey) at par, One Million Dollars of Six Per Cent. Preferred stock, preferred as to assets and dividends, redeemable at any time after five (5) years from date at One Hundred Five (105) and accumulated unpaid dividends.

To the Texas Connecting Company (whose stock is to be owned by the Southwestern Development Company) One Million Dollars ($1,000,000) of said Preferred Stock, as part consideration for the gas delivery contract.

(b) To Standard Oil Company (New Jersey), for One Million Dollars ($1,000,000) cash, fifty (50) per cent. of its no par value common stock (after deducting from the total common stock issued the shares under stock warrants and the fifteen (15) per cent. of the original issue of common stock allowed to Cities Service Company).

(c) To the Texas Connecting Company, fifty (50) per cent. of its no par value common stock (after deducting from the total common stock issued the shares under stock warrants and the fifteen (15) per cent. of the original issue of common stock allotted to Cities Service Company), part consideration for gas delivery contract.

(d) To Cities Service Company, fifteen (15) per cent. of the common stock of the Colorado Company originally issued, as consideration for contracts with the distribution companies in the cities of Denver and Pueblo and other places.

XIX. The plan of final financing which the parties now contemplate is shown on Table No. 1 attached hereto, which the Standard Oil Company (New Jersey) agrees to supervise, and it is agreed that the funds advanced or expenses incurred by the Southwestern Development Company and the Standard Oil Company (New Jersey) for purposes of the project, including costs of incorporating and qualifying the new companies to be formed hereunder and shall be repaid with interest at six (6) per cent. from the date of each advance and/or expenditure out of the funds of the final financing.

XX. The Colorado Company is to have a board of seven directors, of which the Southwestern Development Company may elect three, the Standard Oil Company (New Jersey) three and Cities Service Company one. It is also agreed that the Colorado Company may name one director on each of the boards of the Texas Producing Company and the Texas Connecting Company.

XXI. These stipulations are to form the bases of agreements presently to be drawn embodying the terms hereof and to be executed by the parties hereto promptly when drafted in accord herewith.

Attest: SOUTHWESTERN DEVELOPMENT CO.,
..... By N. K. MOODY, President.
Secretary.

Attest: CITIES SERVICE COMPANY,
..... By ERNEST H. JOHNSTON,
Secretary. Vice President.

Attest: STANDARD OIL CO. (New Jersey),
..... By S. B. HUNT,
Secretary. Vice President.

Amarillo-Denver Project
Financial Statement
Table No. 1

Capital Requirements First Ten Years		
Colorado Company:		
Consideration for purchase bonds Texas Producing Co.	$ 6,665,000	
Consideration for purchase bonds Texas Connecting Co.	5,385,000	
Pipe Line Construction Program in Colorado	10,893,000	$22,943,000
Capital Requirements First Year		
Colorado Company:		
Purchase of bonds of Texas Producing Co. for acquisition of field properties from Amarillo Oil Co., and interest on bonds	$ 5,300,000	
Purchase of bonds of Texas Producing Co. to provide its working capital, new wells, miscellaneous, and interest on bonds	300,000	
Purchase of bonds of Texas Connecting Co. to provide it with working capital, main line construction, field lines, compressor station, telephone line, gasoline plant, miscellaneous, and interest on bonds	4,375,000	
Main and branch lines in Colorado, telephone line, working capital, miscellaneous, and interest during construction	8,925,000	
	$18,900,000	

11341

FEDERAL POWER COMMISSION
BUREAU OF ENGINEERING — DENVER REGIONAL OFFICE

EXHIBIT 44

GENERAL MAP OF THE PIPE-LINE SYSTEMS
OF
CANADIAN RIVER GAS COMPANY,
COLORADO INTERSTATE GAS COMPANY AND
COLORADO-WYOMING GAS COMPANY
AND PORTIONS OF THE SYSTEMS OF OTHER MAJOR PIPE-LINE COMPANIES
TAKING GAS FROM THE TEXAS PANHANDLE AND HUGOTON GAS FIELDS

REVISIONS	DATE	BY

APPROVED Carlos A. Ellsberg DATE 12-31-40
APPROVED — DATE
APPROVED — DATE
DRAWN BY K.R.C. DATE OCT. 30, 1940
CHECKED J.L.M. Jr.
TRACED SEE ORIGINAL

D-19-2

SCALE IN MILES

INFORMATION SHOWN ON THIS MAP IS AS OF DECEMBER 31, 1939
PIPE-LINE FACILITIES SHOWN ON THIS MAP ARE DIAGRAMMATIC ONLY

LEGEND
- COMPRESSOR STATION
- TRANSMISSION LINE (SIZES OF PIPE-LINES SEE IT)
- INTERCONNECTION BETWEEN SYSTEMS
- OFFICES
- NUMBERED OWNERSHIP SEE LISTING ON THIS MAP

N

WYOMING
LARAMIE
KIMBALL
CHEYENNE
DEUEL
KEITH
NEBRASKA
SEDGWICK
PERKINS
LOGAN
PHILLIPS
CHASE
HAYES
LARIMER
MORGAN
DUNDY
HITCHCOCK
BOULDER
WASHINGTON
YUMA
CHEYENNE
RAWLINS
ADAMS
ARAPAHOE
DOUGLAS
ELBERT
KIT CARSON
SHERMAN
THOMAS
COLORADO
TELLER
EL PASO
LINCOLN
CHEYENNE
WALLACE
LOGAN
GOVE
TREGO
ELLIS
RUSSELL
KANSAS
FREMONT
CROWLEY
GREELEY
WICHITA
SCOTT
LANE
NESS
RUSH
BARTON
CUSTER
PUEBLO
KIOWA
HAMILTON
KEARNY
FINNEY
HODGEMAN
PAWNEE
EDWARDS
STAFFORD
OTERO
BENT
PROWERS
GRAY
FORD
PRATT
HUERFANO
STANTON
GRANT
HASKELL
KIOWA
LAS ANIMAS
BACA
STEVENS
MEADE
CLARK
COMANCHE
BARBER
MORTON
SEWARD
OKLAHOMA
TEXAS
HARPER
WOODS
CIMARRON
COLFAX
UNION
WOODWARD
MAJOR
DALLAM
SHERMAN
HANSFORD
OCHILTREE
LIPSCOMB
ELLIS
DEWEY
HARDING
MOORE
HUTCHINSON
ROBERTS
HEMPHILL
ROGER MILLS
CUSTER
OLDHAM
POTTER
CARSON
GRAY
WHEELER
WASHITA
BECKHAM
QUAY
DEAF SMITH
RANDALL
ARMSTRONG
DONLEY
COLLINGSWORTH
GREER
HARMON
JACKSON
TILLMAN
NEW MEXICO
TEXAS

OWNERSHIP
1. AMARILLO OIL COMPANY
2. CONSOLIDATED GAS UTILITIES CORPORATION
3. THE CENTRAL GAS UTILITIES COMPANY
4. COLORADO INTERSTATE GAS COMPANY
5. CANADIAN RIVER GAS COMPANY
6. CITIES SERVICE GAS COMPANY
7. COLORADO-WYOMING GAS COMPANY
8. GOODSTEIN PIPE LINE COMPANY
9. KANSAS GAS COMPANY
10. LONE STAR GAS COMPANY
11. NATURAL GAS PIPELINE COMPANY OF AMERICA
12. NORTHERN NATURAL GAS COMPANY
13. PANHANDLE EASTERN PIPE LINE COMPANY
14. PANHANDLE PIPE LINE COMPANY
15. TEXOMA NATURAL GAS COMPANY
16. UNITED GAS PIPE LINE COMPANY
17. WEST TEXAS GAS COMPANY

Method of Financing:

*Bonds, 20 year, 6%, Sold at par, Preferred Stock, 6%	$18,000,000	
$1,000,000 sold to Standard Oil Co. (N. J.) at par	1,000,000	
1,000,000 to Texas Connecting Co., part consideration.		
$2,000,000		
Stock Warrants, 180,000 at not less than $15	2,700,000	
Common Stock—Standard Oil Co. (N. J.) to pay for its allotment	1,000,000	
Out of earnings from time to time (unless bonds realize a premium)	243,000	$22,943,000

Division of Shares of No Par Common Stock:	Shares	Per Cent.
Stock Warrants	180,000	14.4
Southwestern Development Co., via Texas Connecting Co., for contracts and field properties	441,250	35.3
Standard Oil Co. (N.J.) for $1,000,000 cash	441,250	35.3
Cities Service Co. for city gate contract	187,500	15.
	1,250,000	100.0

(*) Suggested $5,300,000 be retired in 20 years, and $12,700,000 on 10-year basis in the sinking fund.

Requirements of the Three Companies, First Ten Year Period, in Detail

Texas Producing Company		
New wells	$ 1,300,000	
Interest during construction	5,000	
Working capital	60,000	$ 1,365,000
Texas Connecting Company		
88 miles main line	$ 3,000,000	
Field station and gasoline plant	1,050,000	
Field lines	790,000	
Telephone line	80,000	
Well lines	335,000	
Interest during construction	110,000	
Working capital	20,000	$ 5,385,000
Colorado Company		
Payment to Southwestern Dev. Co. for field	$ 5,000,000	
First year's interest thereon	300,000	
Main and branch lines	8,245,000	
Telephone line	123,000	
Pump station	2,210,000	
Interest during construction	250,000	
Working captal	65,000	$16,193,000
Grand Total, Requirements First Ten Years		$22,943,000

EXHIBIT NO. 1
20

First Year's Requirements of the Three Companies, in Detail

Texas Producing Company		
Working capital	$ 60,000	
New wells	200,000	
Miscellaneous	30,000	
Interest during construction	10,000	$ 300,000
Texas Connecting Company		
88 miles main line	$ 3,000,000	
Field compressing station	350,000	
Field gathering lines	300,000	
Telephone line	80,000	
Interest during construction	105,000	
Working capital	20,000	
Gasoline plant	350,000	
Miscellaneous	170,000	$ 4,375,000
Colorado Company		
Payment to Southwestern Dev. Co.	$ 5,000,000	
One year's interest thereon	300,000	
Main and branch lines	8,245,000	
Telephone line	123,000	
Interest during construction	250,000	
Working captal	65,000	
Miscellaneous	242,000	$14,225,000
Grand Total, First Year's Requirements		$18,900,000

A. There was no corporate relationship. That is to say, the Standard owned no stock in Ford, Bacon & Davis and Ford, Bacon & Davis was not interested in Standard Oil Company.

Q. You are positive of that?

A. I am positive of that, yes, sir.

Q. You examined the stockholders list of Ford, Bacon & Davis?

A. No, but I know that the Standard Oil Company owns no stock in Ford, Bacon & Davis, Incorporated, and I am quite equally sure that the firm of engineers had no stock of the Standard Oil Company. They had other uses for their capital.

Q. Do you know whether or not any members of the Rockefeller family or any trusts that you set up during the period you were connected with the Standard Oil Company had any interest in Ford, Bacon & Davis, Incorporated?

A. I am sure there was no relationship between any of these interests. Ford, Bacon & Davis was entirely owned by the engineers who carried on the business of the firm. It was just an engineering firm like any other nationally known engineering firm.

Q. Who did you understand to be in control of Ford, Bacon & Davis—what person?

A. Well, George W. Bacon, I think, was president; then his partners—it was originally a partnership; when that was incorporated there were Messrs. Von Phul, Uebelacher, Rhodes, Hill and Black—there were two Blacks, one in charge of the California office and one in charge of the New Orleans office. Those were the men who constituted Ford, Bacon & Davis and owned the company.

Q. None of these men were ever connected in any way, directly or indirectly, with Standard Oil Company?

A. None of them.

Q. But you have not seen the stockholders list and you did not see the stockholders list of Ford, Bacon & Davis, Incorporated?

A. No, I never did.

Q. So you would not be prepared to say as to whether or not the members of the Rockefeller family, or voting

trusts set up by them, held substantial stocks of Ford, Bacon & Davis?

A. I am sure of that, because I talked with members of Ford, Bacon & Davis and I knew the constitution of their organization.

Q. That would eliminate any possibility of the Rockefellers owning that stock?

A. I am sure of that.

Q. As I understand it, Ford, Bacon & Davis did practically all of the gas engineering work for the Standard Oil Company?

A. I will tell you how our connection with them took place. While I was in Pittsburgh, working for the Peoples Natural Gas Company, I overheard Mr. Uebelacher testify for the Philadelphia Gas Company and I was so impressed with his testimony and his ability to handle himself in matters of that kind that when we had our first rate case I wanted Mr. Uebelacher of Ford, Bacon & Davis to represent us. That was the beginning of our relationship with Ford, Bacon & Davis.

Q. What year was that?

A. Oh, that was somewhere in 1919 or 1918.

Q. And you were responsible for the employment—

A. (Interposing) I think so, originally, yes.

Q. And they were your exclusive engineers?

A. They were not our exclusive engineers.

Q. They have done all of your gas engineering work, haven't they?

A. No. We have had other engineers, quite a number of other engineers.

Q. Engineering firms?

A. Engineering firms. For instance, Ralph E. Davis did most of our engineering in connection with tax reports, depletion studies.

Q. I mean, construction of gas properties. I should make myself clear there. You don't recall of any other engineering firm doing that kind of work for you?

A. I don't recall any engineering firm that did any construction for us excepting Ford, Bacon & Davis.

Q. Do you own any stock or have you ever owned any stock in Ford, Bacon & Davis?

A. I never have.

Q. Do any of your relatives work for Ford, Bacon & Davis, Incorporated?

A. No, sir, none of my relatives ever had a job there.

Q. I want to ask you a question about this Colorado Springs transaction whereby Colorado Interstate, Standard Oil Company, put up the money to purchase, to buy out Mr. Arthur K. Lee, his rights and franchises in regard to delivery of gas to Colorado Springs and certain other cities. As I understand, you are familiar with that transaction.

A. Somewhat familiar, yes.

Q. As I understand, Standard Oil Company, of which you were an officer, advanced $275,000.00 to purchase the gas rights—I mean, the franchise rights of Mr. Arthur K. Lee of Colorado Springs and certain other cities in the immediate vicinity.

A. I don't remember whether the Standard Oil Company loaned that money to the Colorado Interstate Gas Company, but I do recall that the Colorado Interstate Gas Company bought those rights from Mr. Lee. I think the amount was $275,000.00.

Q. Through whom were those rights purchased? They were not purchased directly, were they?

As I understand it, they were purchased, they used intermediary Pratt & Dunham. Mr. Pratt, as I understand it, was connected with Ford, Bacon & Davis.

A. There was a man named Pratt, I believe, who was intermediary, but I don't think Pratt was *every* connected with Ford, Bacon & Davis. Pratt was an intermediary. I don't know where he comes from—midwest, somewhere. I don't think he was connected with Ford, Bacon & Davis, but I think Ford, Bacon & Davis negotiated with Pratt.

Q. Yes. As I understand it, Mr. Pratt and Dunham secured the assignment of the rights from Arthur K. Lee, and then they negotiated—

A. (Interposing) You mean there was a brokerage between Lee and Pratt & Dunham?

Q. As I understand it—I am just trying to find out whether there was a brokerage or not. You say there was $275,000.00 paid. Now, I want to know if there was a brokerage fee paid Pratt & Dunham for securing that assignment from Lee.

A. Well, I know Pratt was in it and I suppose he got some of the payment, although I am not sure.

Q. You are not sure how much?

A. I am not sure whether he got any and I am not sure whether he got much.

Q. All you know is that there was $275,000.00 supposed to have been paid to Mr. Lee?

A. That is correct.

Q. And did you have anything to do with employing this intermediary here, Pratt & Dunham?

A. No.

(Vol. 1, pp. 58-63.)

Exhibit No. 10 Federal Trade Commission Report, Vol. 83, Senate Document 92, of date December 15, 1935, from the testimony of Christy Payne, formerly Vice-President and Director of Standard Oil Company of New Jersey (p. 195) and President of Colorado Interstate Gas Company from 1920 to and during 1927 (beginning on page 196 of said exhibit):

Question. And the other interests in the ownership of the Colorado Interstate Gas Co., I understood, were the Southwestern Development Co. and the Cities Service group?

Answer. The Southwestern Development Co. owned 42½ percent; Cities Service Co., 15 percent.

Question. And your interests, 42½?

Answer. And the Standard Oil Co. of New Jersey, 42½ percent; yes, sir.

Question. One of the important considerations in the organization of the Colorado Interstate Gas Co. was finding a market for the gas, was it not, up in Colorado?

Answer. That was the sole purpose of the organization of the company; yes, sir.

Question. And in the available markets or possible markets Denver figured as probably the most important one, did it not?

Answer. There were two important factors. Without either one of these the project was not feasible. One was the city of Denver and the other was the steel plant in Pueblo.

Question. Which of those two was the more important?

Answer. Well, it is hard to say. They both were necessary to support the practibility of the enterprise. The steel plant gave the steady load, and the Denver plant gave the domestic load.

Question. But there were some industrial loads at Denver, also, were there not?

Answer. Rather small ones, yes.

Question. In order to assure yourselves of an outlet in Denver, you had to arrange matters through the local distributing company there, did you not?

Answer. Yes.

Question. The Public Service Co. of Colorado?

Answer. We had to negotiate a contract for delivery of natural gas to that company.

Question. And did you negotiate such a contract, as a preliminary to the organization of the company, or as a part of the organization?

Answer. I would say as a preliminary.

* * * * *

And also the testimony of George H. Shaw, General Counsel for Public Service Company of Colorado, beginning on page 203 of said exhibit with the following:

In that connection, the Public Service of Colorado being one of a Cities Service group, I discussed the matter with Mr. Doherty. An investigation was made by representatives of the Cities Service group, with reference to the feasibility of bringing natural gas into Denver from the Amarillo field. The conclusion was that it would not be economically feasible, having regard to the available markets in Denver and Colorado. Some time later, the Standard Oil Co. and its associates, having some interests in the Texas field, brought this matter to the attention of the Cities Service interest, and stated that they were able to get the load from the Colorado Fuel & Iron Co., which is the steel company of Pueblo, which would be the determining factor in making the construction of the line feasible. The domestic load in Denver and the industrial load for the steel plant in Pueblo were the combination that made it possible. The C. S. & I. were the owners, probably, of the largest number of coal mines in the State; and, subsequent to the introduction of natural gas, the development of a lot of these mines was abandoned. The franchise, passed in February 1927, contained a clause to the efect that if the city of Denver at any time, I think, within 10 years—I may be—I

am giving this from memory—determined that it was feasible to bring a supply of natural gas to the city of Denver, then the Public Service Co. of Colorado would make arrangements to supply the people of Denver with natural gas, within 2 years from the time, after proper investigation and determination by the city, that it had been determined to be feasible; and, upon failure to do so, were to pay a penalty, I think, of $50,000 for the balance of the term of the franchise.

Subsequent to the passage of the franchise, in February, these negotiations started with the Standard Oil group. The Public Service Co. of Colorado were supplying the market with artificial gas. There was considerable expense involved in a change-over from artificial to natural gas; and, so far as the group that I represented was concerned, they were not eager to have natural gas brought to Denver, on account of the investment that was entailed, and the fact that they had an adequate, sufficient manufactured-gas plant, serving the needs of the people of Denver. The Standard Oil group indicated that they intended to find a market for this gas and offered either to buy the distributing plant from the Public Service Co. of Colorado, or to make an agreement, at the city gate, for the supply of this natural gas. There was no alternative from the standpoint of the company that I represented, except to either sell the plant or make the contract, because they were coming into the field. A contract was made, and then the negotiations were carried on with the city for the bringing of natural gas to Denver, determining the city-gas rate, and the fixing of a rate, based upon the section of the franchise passed in February 1927.

During the summer, and over a period of several months there were hearings. The city employed an independent engineer to make valuations. Very detailed investigation was made of the line, cost of the line, and what might be determined to be a fair and reasonable city-gate rate, in order to make this available for the city of Denver. After these investigations had been made, and an agreement had been reached with the city, this rate ordinance was introduced, passed, and approved in September sometime, 1927.

I was not the attorney for the Colorado Interstate Gas

Co., but their attorney was Milton Smith, now deceased, a very prominent lawyer in the Rocky Mountain region. I was not attorney for the Standard Oil Co. My interest was solely with the Public Service Co. of Colorado, in an attempt to protect their interest.

* * * * * *

Question. Yes. And then, how was it arranged that you were to go to New York?

Answer. I had been down to New York. I do not know about this time, whether I had been there for several weeks, or not; but I had been to New York, off and on, on this matter, since early spring. There wasn't any special trip, I just would be down there. I was down there one time when we first—on this contract—8 or 10 weeks, and then back in Denver, and back in New York. I cannot tell you about the time.

* * * * * *

Question. I understood you to say that you either had to join in on this Colorado Interstate Gas Co. transaction—not "transaction", but organization of the company, or else see your market taken from you.

Answer. They were going to build a pipe line into Colorado, and pick up the C. F. & I. load, and come to Denver, and we either had to contract with them, sell our plant, or take our chance on what they might do when they got up there, with a separate system; which, of course, would be ridiculous.

Question. Then, I take it, that you were a more or less unwilling participant in the organization of the Colorado Interstate Gas Co.

Answer. I would say so, at the beginning—thorough co-operation, since.

Question. You had gas and acreage, did you not, in the Panhandle, which you considered using to serve Denver, in case you ever brought gas there?

Answer. We have lots of gas acreage in the Panhandle, but a lot of that goes in to the Mid-Continent people, and I really cannot tell you. There is plenty of gas there, and the idea would be, on the construction of the line, whether

you acquired the leases, or purchased the gas at the well, or what it would be. I do not know that there was any particular block or group of acreage that it could be said that we considered in connection with a Denver market, because the acreage is all there, and the market.

Question. But you did have considerable acreage there?

Answer. Oh, yes.

Question. Even at that time, too?

Answer. I think so.

Question. Was that acreage adjoining the acreage from which the Colorado Interstate Gas Co. draws its supply?

Answer. I cannot answer that, Mr. Wooden. I am not familiar enough with that. It has been so long since I have given it any consideration. It is all in that same area down there.

Question. Can you say whether or not the possibility of drainage from your acreage entered into your final consent to go into the deal?

Answer. No; I wouldn't think so. I think it probably was determined purely on the Denver market and the ownership that we had in Denver.

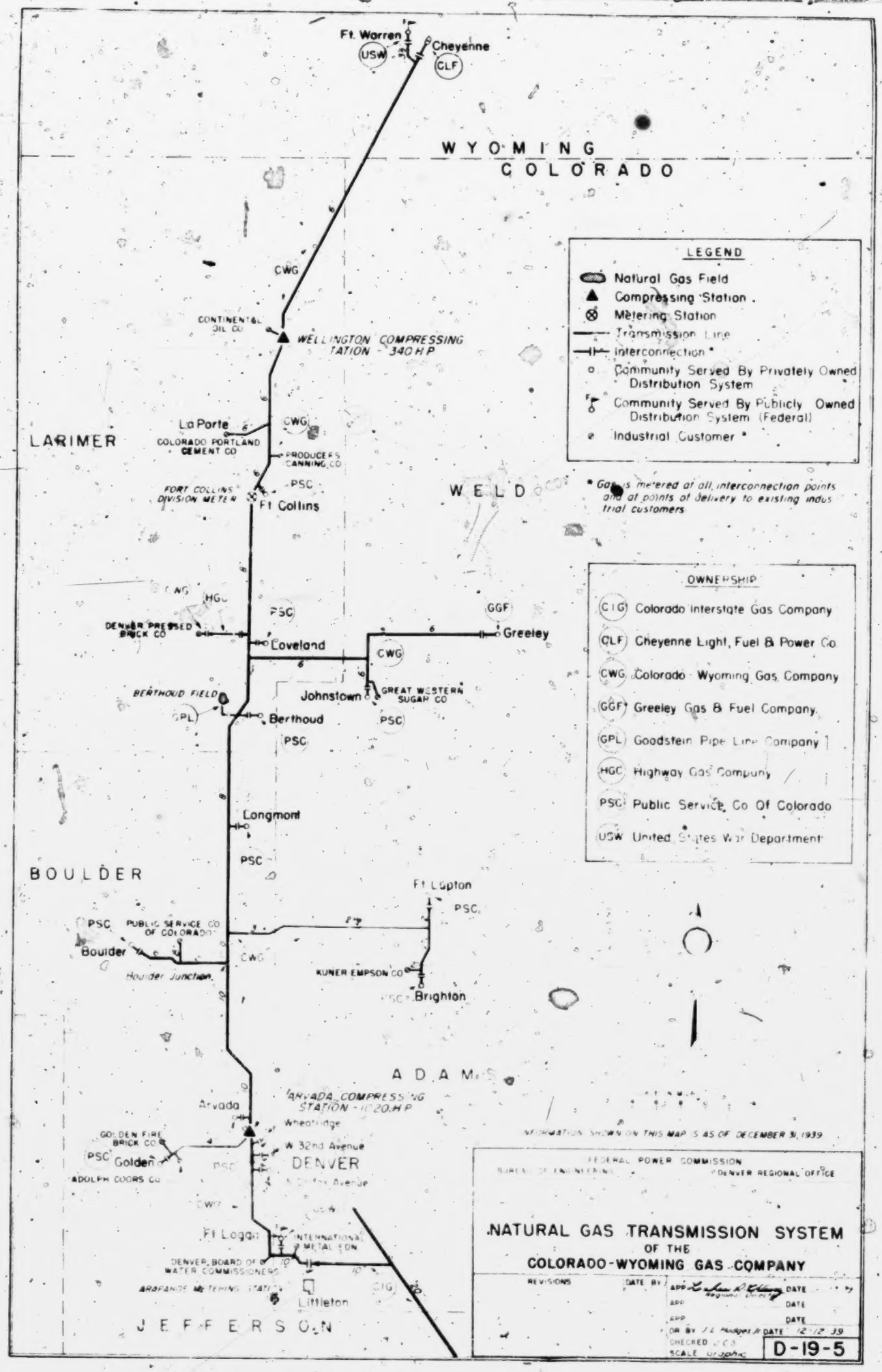

EXHIBIT NO. 50

EXHIBIT 51

Colorado-Wyoming Gas Company

General Description of Property and Operations

Introduction

Colorado-Wyoming Gas Company was incorporated under the laws of the State of Delaware on December 1, 1925. The company operates in Colorado and Wyoming. Colorado-Wyoming Gas Company owns and operates a gas transmission system which extends from a point near Littleton, Colorado to Cheyenne, Wyoming, with branches to a number of communities in northern Colorado and to Fort Warren, Wyoming. Natural gas is purchased by the company at two points in Colorado, transmitted through its pipe-line system, and resold for ultimate public consumption for domestic, commercial, and industrial uses in Colorado and Wyoming.

Important Facts Relating to the Development of the Property

1. On December 10, 1925, Colorado-Wyoming Gas Company entered into a contract with an oil company, Fort Collins Producing Corporation, for the purchase of surplus gas at the Wellington Field in Larimer County, Colorado, for an indefinite period, to supply available markets in a number of areas, including Fort Collins, Colorado and Cheyenne, Wyoming. The contract also contemplated possible eventual service to Loveland, Longmont, Boulder, Greeley, and Denver, Colorado, and intermediate points and contiguous territory.

2. In the latter part of 1925, a 6-inch gas transmission line was built by agents for the company from the Wellington Field to Fort Collins. Deliveries to Poudre Valley Gas Company(1) at Fort Collins began December 10, 1925.

3. As of April 1, 1926, Colorado-Wyoming Gas Company entered into a contract with the Cheyenne Light, Fuel and Power Company for the delivery of gas to the latter company at Cheyenne, Wyoming. A 6-inch pipe line was constructed from the Wellington Field to Cheyenne, and town-border deliveries began July 7, 1926.

4. During 1927, the company built a 6-inch branch line from the Wellington-Fort Collins main line to the plant of the Colorado Portland Cement Company near La Porte, Colorado. First deliveries of gas to this customer were made on November 5, 1927.

5. When the Colorado-Wyoming Gas Company first started operations in 1925, it purchased its gas requirements from the Fort Collins Producing Corporation in the Wellington Field. This corporation continued to supply the company's entire requirements until 1928, when a connection was made to Colorado Interstate Gas Company. Gas purchases

(1) Acquired by Public Service Company of Colorado in 1926 (Moody's Public Utility Manual, 1939 edition, page 1572).

from Fort Collins Producing Corporation declined each year as the Wellington Field became depleted and, in March 1937, ceased entirely. Fort Collins Producing Corporation now purchases gas from Colorado-Wyoming Gas Company to carry on oil field operations.

6. On October 3, 1929, Colorado-Wyoming Gas Company entered into a 20-year contract with Colorado Interstate Gas Company for purchase of gas at a point in Arapahoe County, Colorado, near Littleton. This agreement provides for the delivery by Colorado Interstate Gas Company of natural gas required by Colorado-Wyoming Gas Company to supply the following; domestic consumers; distribution companies in northern Colorado and southern Wyoming; industrial consumers served under contracts made with the consent and approval of Colorado Interstate Gas Company; and gas used in compressing stations and other property of Colorado-Wyoming Gas Company.

7. During the latter part of 1929 and the early part of 1930, Colorado-Wyoming Gas Company constructed approximately 30 miles of 10-inch and 43 miles of 8-inch main line from Arapahoe Measuring Station to Fort Collins, where a connection was made with the existing 6-inch line to Cheyenne, Wyoming. The first deliveries of Texas Panhandle gas to Fort Collins and north were made January 21, 1930. In 1929, 1930, and 1931, branch lines were constructed to a number of communities in Colorado, including Arvada, Boulder, Berthoud, Brighton, Fort Lupton, Golden, Longmont, Loveland, Johnstown, and Wheatridge, to deliver gas to Public Service Company of Colorado for resale to ultimate consumers in these communities. A line was built to Greeley, Colorado in 1930 to deliver gas to Greeley Gas and Fuel Company for resale to consumers in that community. Branch lines were constructed to serve two direct industrial customers - Golden Fire Brick Company, whose plant is located near Golden, and Great Western Sugar Company near Johnstown. During this same period, a number of points of delivery were established for sale of gas to Public Service Company of Colorado for resale in Denver suburban areas in Jefferson County, Colorado, generally referred to as "Denver Fringe".

8. On April 10, 1930, Colorado-Wyoming Gas Company entered into an agreement with Five Square Oil and Gas Company and Myer Goodstein to purchase natural gas produced by them in the Berthoud Field, Larimer County, Colorado. This contract is to remain in effect as long as gas of a satisfactory quantity, quality, and pressure can be delivered by the vendors from the Berthoud Field. In May 1930, Colorado-Wyoming Gas Company built approximately one mile of 2-inch line to bring gas from this field to its main transmission line. On November 25, 1939, a new agreement for the purchase of gas from the Berthoud Field was made, in which the Goodstein Pipe Line Company replaced Five Square Oil and Gas Company and Myer Goodstein as vendor. The quantity of gas purchased by Colorado-Wyoming Gas Company from the Berthoud Field is relatively small, being approximately two-percent of the company's total annual requirements.

EXHIBIT 51

9. During the latter part of 1926, the Wellington Compressing Station, containing three 85-horsepower, gas-engine driven gas compressors, was constructed in the Wellington Field. In 1927 and 1928, seven additional gas compressors were installed, bringing the station to 1,360 rated horsepower.

In 1930 and 1931, due to decline of gas purchases from the Wellington Field and increase in purchases from Colorado Interstate Gas Company at Littleton, six of the gas compressors with a total rating of 1,020 horsepower, and some structures and auxiliary equipment, were removed from Wellington Station and installed at a new site, the Arvada Compressing Station, located in Jefferson County, Colorado, near Denver, approximately 14 miles from Arapahoe Measuring Station.

10. From 1932 to 1939, the only important changes in the system were the construction of lateral lines to serve direct industrial customers. Such extensions are summarized as follows:

Customer	Location
Kuner-Empson Company	Brighton, Colorado
Public Service Company of Colorado - Valmont Generating Station	Near Boulder, Colorado
Board of Water Commissioners of the City and County of Denver - Marston Lake Pumping Plant	Near Denver, Colorado
Adolph Coors Company	Golden, Colorado
International Metals Foundation	Near Denver, Colorado

Description of Facilities Owned as of December 31, 1939

1. Colorado-Wyoming Gas Company owns and operates approximately 195 miles of gas pipe line located in Arapahoe, Jefferson, Boulder, Adams, Larimer, and Weld counties in Colorado, and Laramie County, Wyoming. Approximately 60 percent of the pipe line is located on public rights-of-way, the remainder being on private rights-of-way.

The main trunk line extends from Arapahoe Measuring Station in Arapahoe County, Colorado, where gas is received from Colorado Interstate Gas Company, to Cheyenne, Wyoming, and is approximately 114 miles long. From Arapahoe Measuring Station to Boulder Junction, approximately 30 miles, the line is 10-inch nominal diameter; from Boulder Junction to Fort Collins, approximately 43 miles, the line is 8-inch nominal diameter; and from Fort Collins to Cheyenne, approximately 41 miles, the line is 6-inch nominal diameter.

EXHIBIT 31

The total length of all branch lines is approximately 81 miles. Branch lines are of various diameters from one inch to eight inches. The longest branch lines are the Brighton-Fort Lupton branch and the Greeley-Johnstown-Great Western Sugar Company branch, which are, respectively, approximately 23 miles and 26 miles.

2. As of December 31, 1939, Colorado-Wyoming Gas Company owned and operated two gas compressing stations - Arvada Station, located in Jefferson County, Colorado, near Denver, and Wellington Station, located in the Wellington Field in Larimer County, Colorado.

At Arvada, which is the main compressing station, there are installed six 170-horsepower Cooper gas-engine driven gas compressors, or a total rating of 1,020 horsepower.

At Wellington Station, which is operated only during winter peak loads or in emergencies, there are installed four 85-horsepower Cooper gas-engine driven gas compressors, or a total rating of 340 horsepower.

The company owns a telephone line strung on the poles of the Mountain States Telephone and Telegraph Company from Wellington Station to the main circuits of the telephone company at the town of Wellington.

3. Colorado-Wyoming Gas Company owned 39 gas measuring stations at the end of 1939. One station measures Berthoud Field gas purchased from Goodstein Pipe Line Company. Another station, the Fort Collins Division Meter, measures the amount of gas delivered from the south into the Fort Collins-Cheyenne section of the system. The remaining 37 stations measure gas sold to distribution companies for resale and gas sold directly to consumers.

4. Colorado-Wyoming Gas Company formerly sold gas directly to a country club and to 16 domestic customers located near or along its right-of-way. On July 26, 1939, these customers were transferred to Public Service Company of Colorado. These customers are still connected to the lines of Colorado-Wyoming Gas Company.

Description of the Operations of the Company in the Year 1939

1. Colorado-Wyoming Gas Company does not produce any natural gas. The company purchases its entire natural gas requirements from Colorado Interstate Gas Company and Goodstein Pipe Line Company.

Approximately 98 percent of Colorado-Wyoming Gas Company's total annual gas requirements is purchased from Colorado Interstate Gas Company. This gas is produced by Canadian River Gas Company, Texas, transported by that company into New Mexico, and transported by Colorado Interstate Gas Company from New Mexico into Colorado and sold to Colorado-Wyoming Gas Company at Arapahoe Measuring Station, near Littleton, Colorado.

Approximately two percent of the total annual gas requirements of Colorado-Wyoming Gas Company is purchased from Goodstein Pipe Line Company. Gas purchased from this company is produced in the Berthoud Field in Colorado, enters the main transmission line of Colorado-Wyoming Gas Company near the town of Berthoud, and co-mingles with gas purchased from Colorado Interstate Gas Company.

For a short period in the latter part of 1939, the company purchased from an individual named Ed Mosher, a relatively small amount of natural gas produced by him the Berthoud Field.

2. Colorado-Wyoming Gas Company transmits natural gas purchased from the above-named sources through its pipe-line system and sells natural gas to four distribution companies - Public Service Company of Colorado, Greeley Gas and Fuel Company, Highway Gas Company, and Cheyenne Light, Fuel and Power Company.

In 1939, Colorado-Wyoming Gas Company sold 896,043 MCF(2) of natural gas to Public Service Company of Colorado for resale by that company for ultimate public consumption for domestic, commercial and industrial uses in a number of communities in northern Colorado. The communities and the volume of gas delivered to each in 1939 are shown in the following tabulation. The dates on which Colorado-Wyoming Gas Company first delivered gas to each of these communities are also shown.

Community	MCF Delivered in 1939	Date of Initial Natural Gas Deliveries
Berthoud	4,723	December 10, 1929
Boulder	152,163	September 28, 1929
Brighton	24,582	June 25, 1931
Fort Collins	336,261	December 10, 1925
Fort Lupton	8,739	July 1, 1931
Golden	118,421	September 1, 1930
Johnstown	7,737	July 22, 1930
Longmont	39,373	April 11, 1931
Loveland	38,468	June 12, 1930
"Denver Fringe"	165,576	December 6, 1929(3)
	896,043	

The contract between Colorado-Wyoming Gas Company and Public Service Company of Colorado, covering the delivery of gas to communities in northern Colorado, is dated October 3, 1929.

Colorado-Wyoming Gas Company sells natural gas to Greeley Gas and Fuel Company, which the latter resells to domestic, commercial and industrial customers in Greeley, Colorado. In 1939, the volume of gas sold at the Greeley town border was 147,406 MCF. Initial deliveries of

(2) All gas volumes referred to in this exhibit are on a pressure base of 14.65 pounds per square inch absolute.
(3) Wheatridge.

gas to Greeley Gas and Fuel Company were made on September 1, 1930, under a contract dated July 29, 1930.

At a point on its main transmission line west of Loveland, Colorado, Colorado-Wyoming Gas Company sells natural gas to Highway Gas Company under a contract dated June 20, 1933. Initial service was rendered on June 30, 1933. Highway Gas Company, which operates a small rural gas distribution system, purchased 4,649 MCF of gas from Colorado-Wyoming Gas Company in 1939.

Colorado-Wyoming Gas Company sells natural gas to Cheyenne Light, Fuel and Power Company, which the latter resells for ultimate public consumption for domestic, commercial and industrial uses in Cheyenne. In 1939, Colorado-Wyoming Gas Company sold 414,807 MCF of natural gas to Cheyenne Light, Fuel and Power Company.

3. Colorado-Wyoming Gas Company transmits gas purchased from Colorado Interstate Gas Company and Goodstein Pipe Line Company through its pipe-line system and sells gas directly to ten industrial consumers, all located in Colorado. The names of these customers, their location (nearest community), volume of gas sold in 1939, and date of initial gas deliveries to each customer is shown in the following tabulation:

Customer	Location	MCF Sold in 1939	Date of Initial Gas Service
Adolph Coors Company	Golden	15,617	Oct. 5, 1936
Colorado Portland Cement Co.	La Porte	864,390	Nov. 5, 1927
Board of Water Commissioners of the City and County of Denver	Denver	7,620	Sept. 18, 1936
Denver Pressed Brick Company	Loveland	44,878	April 2, 1937
Fort Collins Producing Corp'n.	Wellington Field	3,894	Dec. 18, 1925
Golden Fire Brick Company	Golden	57,100	Aug. 7, 1930
Great Western Sugar Company	Johnstown	312,548	Nov. 30, 1929
Kuner-Empson Company	Brighton	33,620	Oct. 24, 1934
Producers Canning Company	Fort Collins	283	July 1, 1927
Public Service Co. of Colorado - Valmont Generating Station	Boulder	26,710	March 1, 1936

Colorado-Wyoming Gas Company also sells natural gas to two U. S. Army posts - Fort Logan, which is near Denver, and Fort Warren, near Cheyenne. Sales to these posts in 1939 were 7,572 MCF and 15,555 MCF, respectively.

Schedule No. 1 of this exhibit is a "gas balance" for Colorado-Wyoming Gas Company for the years 1935 to 1939. This balance shows, on a uniform pressure base of 14.65 pounds per square inch absolute, the volumes of gas purchased, the volume of gas sold to distribution companies and to direct customers in Colorado and Wyoming, gas used by the company, and gas lost and unaccounted for, each year from 1935 to 1939.

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Docket G-124

Colorado-Wyoming Gas Company

GAS BALANCE, 1955 TO 1959

All Figures Are Gas Volumes In MCF On Uniform Pressure Base Of 14.65 Pounds Per Square Inch Absolute

	1955	1956	1957
GAS RECEIPTS			
1. Gas purchased			
a. From Colorado Interstate Gas Company at Littleton, Colorado(1)	2,810,277	2,434,313	2,682,066
b. From Goodstein Pipe Line Company at Berthoud Field, Colorado	41,955	40,875	49,558
c. From Bi Mosher at Berthoud Field, Colorado	0	0	0
d. From Fort Collins Producing Corporation at Wellington Field, Colorado	26,145	7,831	282
e. Total gas purchased	2,878,377	2,483,019	2,731,906
2. Total gas to account for	2,878,377	2,483,019	2,731,906
GAS DISBURSEMENTS			
3. Gas sold			
a. In Colorado			
(1) Delivered to distribution companies			
(a) Greeley Gas and Fuel Company	98,438	121,505	129,862
(b) Highway Gas Company	4,830	4,568	8,254
(c) Public Service Company of Colorado	692,117	745,828	841,336
(d) Total delivered to distribution companies	795,385	871,901	979,432
(2) Delivered directly to consumers	952,670	1,130,324	1,247,621
(3) Total gas sold in Colorado	1,688,055	2,002,225	2,227,053
b. In Wyoming			
(1) Delivered to distribution companies			
(a) Cheyenne Light, Fuel and Power Company	337,479	367,878	400,638
(2) Delivered directly to consumers	16,253	67,479	49,584
(3) Total gas sold in Wyoming	353,732	434,957	450,222
c. Total gas sold in Colorado and Wyoming	2,041,787	2,437,182	2,677,275
4. Gas used by company (in Colorado)	25,600	26,749	38,758
5. Gas lost and unaccounted for	12,990	19,088	15,873
6. Total gas accounted for	2,878,377	2,483,019	2,731,906

(1) Differs from sales by Colorado Interstate Gas Company to Colorado-Wyoming Gas Company by amount of unbilled revenue adjustment.

Schedule No. 1
EXHIBIT 51
11370

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Colorado-Wyoming Gas Company

GAS BALANCE, 1955 TO 1959

All Figures Are Gas Volumes In MMF On Uniform Pressure Base Of 14.65 Pounds Per Square Inch Absolute

	1955	1956	1957	1958	1959
e Gas Company at Littleton, Colorado(1)	2,010,277	2,434,313	2,682,066	2,442,050	2,884,763
e Company at Northeast Field, Colorado	41,955	40,875	49,558	58,250	47,878
east Field, Colorado	0	0	0	0	31,191
ming Corporation at Wellington Field, Colorado	26,145	7,831	282	0	0
	2,078,377	2,483,019	2,731,906	2,500,300	2,935,832
	2,078,377	2,483,019	2,731,906	2,500,300	2,935,832
distribution companies					
y Gas and Fuel Company	98,438	121,395	129,862	136,733	147,406
y Gas Company	4,830	4,568	8,254	7,513	4,649
Service Company of Colorado	692,117	745,838	841,336	860,989	896,043
delivered to distribution companies	795,385	871,901	979,432	1,005,235	1,048,098
otly to consumers	952,670	1,130,324	1,247,621	1,035,817	1,378,371
l in Colorado	1,688,055	2,002,225	2,227,053	2,041,052	2,426,469
distribution companies					
me Light, Fuel and Power Company	337,479	367,878	400,638	391,147	414,807
otly to consumers	16,253	67,679	49,584	15,802	15,555
l in Wyoming	353,732	434,957	450,222	406,949	430,362
rado and Wyoming	2,041,787	2,437,182	2,677,275	2,448,001	2,856,831
rado)	25,600	26,749	38,758	25,452	30,893
	12,990	19,088	15,873	26,847	48,108
	2,078,377	2,483,019	2,731,906	2,500,300	2,935,832

ado Interstate Gas Company to Colorado-Wyoming Gas Company by
adjustment.

Excerpts from Federal Trade Commission Report No. 66, Senate Document 92, Part 66.

[S-1] Summary of Volume I of the Report on Cities Service Co.

This report covers the operations of Cities Service Co. from the date of its organization on September 2, 1910, to December 31, 1930. Cities Service Co. was incorporated in Delaware, with broad charter powers, as a holding company primarily to acquire and hold securities giving control of electric light and power, natural and artificial gas, steam heating, water, electric street and interurban railways, and kindred corporations. It has since organized or acquired control of an important system of petroleum companies engaged in producing, transporting, refining, and marketing crude oil and its products.

Cities Service Co. was organized by Henry L. Doherty & Co., a firm then operating as a partnership consisting of Henry L. Doherty and Frank W. Frueauff and now operating under the sole proprietorship of Henry L. Doherty. In 1910 Henry L. Doherty & Co., which for several years had been operating public-utility properties for others under contract and had been acquiring such properties or minority interests for its own account, considered it desirable to organize a company to acquire the controlling interest in such companies as it then had an interest in and in others which it might acquire. Accordingly, Cities Service Co. was organized and it acquired the interests then owned by Henry L. Doherty & Co. in Denver Gas & Electric Co., Empire District Electric Co., and Spokane Gas & Fuel Co., and the interests of the other shareholders in these companies on the same basis.

[S-2] The investment by Cities Service Co. in the Denver, Empire, and Spokane companies at December 31, 1910, amounted to slightly in excess of $12,000,000. At December 31, 1930, the ledger value of Cities Service Co's. investments exceeded $273,000,000, due to acquisitions and expansions since 1910. The investment by Cities Service Co. in 1910 represented the control of 3 public-utility operating companies located in Denver, Colo., Joplin, Mo., and Spokane,

Wash.; by the end of 1930 its investments represented the control of 160 companies, of which 50 were holding and/or operating electric and other utilities, 42 were holding and/or operating natural-gas utilities, 54 were holding and/or operating petroleum companies, 3 were both holding and/or operating petroleum and natural-gas companies, 1 was a securities company, and the remainder were realty and construction companies. Of these 160 companies only 11 were holding companies with no operations, and of such 11 holding companies 6 held the securities of petroleum and natural-gas companies.

The electric, natural-gas, and other utility companies of the Cities Service system render electric light, power, gas, and/or transportation service in about 20 States and the Dominion of Canada. The petroleum companies represent an important system of oil production, transportation, refining, and marketing. The more important petroleum properties are located in what is commonly called the Mid-Continent field in Kansas, Oklahoma, and Texas. The natural-gas business is conducted principally in Kansas, Oklahoma, Texas, Missouri, Arkansas, Louisiana, and New York. The diversity of the investments of Cities Service Co. at December 31, 1930, is indicated as follows:

[S-3]

	Ledger value	Percent of Total
Electric and other public utility companies	$ 40,566,789	14.8
Natural-gas public-utility companies	33,278,167	12.2
Natural-gas and petroleum companies (not segregated	$82,401,930	
Other domestic oil companies	71,756,209	
	154,158,139	56.4
Foreign oil and natural gas companies	13,937,784	5.1
Cities Service Securities Co.[1]	15,000,000	5.5
Realty companies	5,879,464	2.1
Other	10,525,420	3.9
Total	273,345,763	100

[1]Owns securities of Cities Service Co. and its subsidiaries acquired in connection with furnishing a resale market for security holders.

The ledger value of the consolidated plant and investment of Cities Service Co. and its subsidiaries exceeded $1,000,000,000 at December 31, 1930, and further indicates the tre-

mendous growth to which the Cities Service system as a whole has attained.

Henry L. Doherty exercises practical control of Cities Service Co. and its subsidiaries in two ways—through Henry L. Doherty & Co., fiscal agent, and through ownership of voting stocks of Cities Service Co.

Henry L. Doherty is sole proprietor of the firm of Henry L. Doherty & Co., and this firm acts as fiscal agents for Cities Service Co. and its subsidiaries and has so acted since the formation of the company in September 1910.

(Pp. 774-775.)

* * * * *

The votes held by Mr. Doherty as shown above represent 29.6 percent of the total voting control. Mr. Doherty's holdings represent practical control of Cities Service Co., as indicated by the widespread distribution of that company's stocks and, as further exemplified, by the fact that there were only two other stockholders besides Mr. Doherty who held more than 1 percent of the voting control.

[S-7] As developed in this report control of many companies, representing electric and other public utilities, natural-gas utilities, petroleum companies, foreign oil and natural-gas companies, realty companies and other investments, were acquired for Cities Service Co. during the years 1910-30 by Henry L. Doherty & Co., fiscal agent. During this period Cities Service Co. held directly the common stocks of more than 170 companies at one time or another. By the end of 1930 this number had been reduced to less than 50, principally because of consolidations and mergers which occurred from time to time.

(P. 776.)

* * * * *

[4] *Organization.*—Cities Service Co. was organized by Henry L. Doherty & Co., a firm then operating as a partnership, consisting of Henry L. Doherty and Frank W. Frueauff, and now operating under the sole proprietorship of Henry L. Doherty.

At organization, the following persons were elected directors and officers of Cities Service Co.:

Directors: Henry L. Doherty, Frank W. Frueauff, Charles A. Frueauff, Holton H. Scott, Paul R. Jones, George Barmore, Charles T. Brown, James M. Satterfield, George J. Johnstone, Eugene Y. Sayer, Louis F. Musil, William P. Troth, Carle B. Gilbert, Watson B. Robinson, George R. Shields.

Officers: President, Henry L. Doherty; vice president, Frank W. Frueauff; vice president, Charles T. Brown; secretary, Paul R. Jones; treasurer, Louis F. Musil; assistant secretary and assistant treasurer, Carle B. Gilbert.

Of the above directors and officers, Henry L. Doherty, Charles A. Frueauff, Paul R. Jones, and Louis F. Musil are still members of the board of directors of Cities Service Co.; and Henry L. Doherty, Paul R. Jones, and Louis F. Musil occupy the same offices to which they were elected at the organization of the company.
(P. 779.)

* * * * * *

It appears that the firm of Henry L. Doherty & Co. was formed by Henry L. Doherty to conduct the business of financing and operating public-utility enterprises. From the beginning the firm has maintained a staff of executives, engineers, accountants, and operating personnel trained to supervise the operations and development of such enterprises as well as others with which it later became identified.

Through the medium of the Doherty Operating Co., which was organized in 1906, Henry L. Doherty & Co. secured operating and management contracts and ultimate control of a number of public-utility operating companies. These acquisitions led to the organization of the Cities Service Co. and are now part of the Cities Service system.

Prior to the organization of Cities Service Co., Gas Securities Co., and Gas & Electric Securities Co. were organized. Gas Securities Co. was organized in 1906 at about the time the partnership of Henry L. Doherty & Co. was formed. Gas Securities [7] Co. was originally organized as an investment company for the securities of the gas, electric, and other public utility companies.
(P. 780.)

* * * * * *

Denver Gas & Electric Co. was organized in 1899 and served the city of Denver, Colo., with gas and electricity. Henry L. Doherty had been president of the company for a number of years prior to the organization of Cities Service Co. and even prior to the formation of the partnership of Henry L. Doherty & Co. in 1906. His partner in the firm, Frank W. Frueauff, had also been associated with Mr. Doherty in the management of the Denver Co. It appears that soon after the formation of the partnership of the firm secured through the Doherty Operating Co., which had been organized by the firm in 1906, a contract to operate the Denver Co. for a term of years. Whether the consideration for this service was in Denver stock or some other form is not known for the reasons given above.

Of the 34,945 shares of Denver common acquired by Cities Service Co. under the exchange offers, 7,129 shares, or about 20 percent, of the outstanding, were acquired from affiliated companies, 5,968 shares from Henry L. Doherty & Co., and 1,161 shares from Gas Securities Co. Thus these interests obtained for their 7,129 shares of Denver common, of the par value of $712,900. Cities Service preferred and common of 12,832.2 shares and 6,416.1 shares, respectively, aggregating $1,924,830 par value.

(P. 782.)

* * * * * *

[19] *Control exercised by Henry L. Doherty through Henry L. Doherty & Co., fiscal agent.*—Henry L. Doherty is sole proprietor of the firm of Henry L. Doherty & Co., and this firm acts as fiscal agent for Cities Service Co. and its subsidiaries and has so acted since the formation of the company in September 1910.

Since September 1910 the Cities Service Co. has been controlled by Henry L. Doherty & Co. through stock ownership, and its operations have been supervised through Henry L. Doherty & Co. as fiscal agent.

Aside from its directors and officers, Cities Service Co. does not have any personnel or staff of its own. Such staff is maintained by its fiscal agent, and the cost of such maintenance is charged by the fiscal agent to Cities Service Co.

each month. Each subsidiary operating company has its own local operating personnel. The employees and officers carried on the fiscal agent's—i. e., Henry L. Doherty & Co.—pay roll supervise the affairs of Cities Service Co. The fiscal agent's staff also maintains the corporate records of Cities Service Co; it arranges for the financing of the temporary and permanent capital requirements of Cities Service Co. and its subsidiaries; it is custodian of the funds of Cities Service Co. and its subsidiaries;[a] it receives all funds accruing to Cities Service Co. and deposits them to the credit of their account and disburses funds for the account of Cities Service Co. in the acquisition of capital assets for that company, for the expense of conducting that company's business, and for loans to that company's subsidiaries.

(P. 785.)

* * * * * *

[28] *Control exercized by Henry L. Doherty through stock ownership.*—At March 14, 1931, there were outstanding in the hands of the public 34,172,158 shares of voting capital stocks of Cities Service Co. which were held by 543,306 stockholders. The stock is widely distributed; 536,847, or 90 percent, of all of the stockholders held 20,611,947 shares, or 60 percent of the total, in share lots of from 1 to 500 shares.

(P. 789.)

* * * * * *

[32-A] Henry L. Doherty & Co., Inc. was incorporated in Delaware on November 24, 1928, with an authorized capital of 1,000,000 shares of no par value stock which was issued to Henry L. Doherty in exchange for the net assets of the Henry L. Doherty & Co. (individual).

It is significant that just 10 days prior to the sale of these 200,000 shares, the first official step was taken on March 20, 1929, by the directors of Cities Service Co. to increase Mr. Doherty's voting power by 1,000,000 votes at an investment of $1 per vote. Accompanying the notice to

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[a]Company representatives state that subsequent to Dec. 31, 1930, this practice was changed and all funds are now carried by the Cities Service Co. in commercial banks in its own name or in the name of its subsidiaries.

the stockholders for the annual meeting to be held April 30, 1929, there was a letter which stated in part:
(P. 791.)

* * * * *

In addition to the ownership of the 1,000,000 shares of 5-percent noncumulative stock, Henry L. Doherty also owned 2,395,780 shares of common stock and 5,432 shares of preferred stock at March 14, 1931. At that date, Mr. Doherty was the largest single common-stock holder and his ownership of this stock, together with the 5-percent noncumulative stock and the preferred stock, represented 1,125,221 votes out of 3,803,005 votes, or 29.6 percent of the total voting control.

Mr. Doherty's holdings represent practical control of Cities Service Co., as indicated by the wide-spread distribution of that company's stocks. This is further exemplified by the fact that there were only two other stockholders besides Mr. Doherty who held more than 1 percent of the voting control and these were G. E. Semonite of 60 Wall Street, New York City, and Broekmans Administratiekantoor of Amsterdam, Holland, who held 68,517 votes (1.8 percent) and 55,625 votes (1.5 percent), respectively. G. E. Semonite held in his name the stock of employees being purchased by them under subscription contracts and Broekmans Administratiekantoor was a nominee for certain Dutch investors.
(P. 793.)

KENNETH L. SMITH, called as a witness by and on behalf of the Federal Power Commission, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Lange:

Q. Will you state your name, please?

A. My name is Kenneth L. Smith.

Q. You are presently employed by the Federal Power Commission?

A. Yes, sir.

Q. And you are residing in the City of Denver, Colorado?

A. Yes, sir.

Q. Do you have a statement giving your educational qualifications in the work you are now engaged?

A. Yes, sir.

Q. Would you read that into the record?

A. This is a statement of both education and experience.

Q. These are just your qualifications that you are reading into the record at this time?

A. Yes, sir.

"My name is Kenneth L. Smith. I am employed by the Federal Power Commission in the capacity of Principal Examiner of Accounts.

"I am a member of the Illinois Society of Certified Public Accountants, the American Accounting Association, and Beta Alpha Psi, professional accounting fraternity.

"In June, 1927, I was graduated from the College of Commerce and Business Administration of the University of Illinois with the degree of Bachelor of Science, having specialized while at that school in accounting.

"I am a Certified Public Accountant of the State of Illinois, having passed the required examination in 1930, and in 1937, as the result of graduate study and upon the completion of a thesis, I had the degree of Master of Science conferred upon me by the University of Illinois.

"The major subject of my graduate study was accounting. This graduate work embraced courses having to do

with the nature of basic accounting concepts, such as capital, income, revenue, expenses, losses, depreciation, profits and surplus; with the purposes, form and content of accounting reports; with the theory and problems of cost accounting; and with the problem of managing and regulating public utilities.

"Immediately after being graduated from school in 1927 I was employed by F. W. Lafrentz & Company, Certified Public Accountants, to work in their Chicago office and I continued in their employ for seven years, until August 1934. During the latter years of that employment I served as a senior accountant, in a supervisory capacity.

"While with F. W. Lafrentz & Company I participated in a variety of accounting engagements which included not only the usual balance sheet and detailed audits but a number of special investigations as well.

"Some of these special engagements involved the preparation of income tax returns for public utility company groups and related depreciation studies, examinations made preparatory to financing operations, and examinations made preliminary to the acquisition by public utility companies, of operating properties including natural gas properties.

"My experience with F. W. Lafentz & Company familiarized me with the practical operations of public utility operating, mangement, construction, and holding companies for more than half my time with that firm was spent on public utility work, both gas and electric.

"In September 1934 I accepted a position as top senior accountant in the Chicago office of Deloitte, Plender, Griffiths & Company, an international firm of public accountants. I retained that position until June 1936. During this employment I supervised the annual field audits and preparation of accounting reports thereon for several utility holding and operating companies. This included preparation of consolidated financial statements for groups having both American and foreign subsidiaries. I also supervised the preparation of the accounting sections of registration statements and annual reports filed by utility clients with

the Securities and Exchange Commission under the Securities Act and Securities Exchange Act, respectively.

"In addition to the utility work outlined in the foregoing, which occupied by far most of my time during that period of employment, I supervised the annual audits and the preparation of the annual reports of packing houses, finance companies, coal mining companies, and other industrials.

"Effective December 1, 1936 I accepted an appointment as Principal Examiner of Accounts in the Division of Finance of the Federal Power Commission. I retained that position until September 1938. My principal duties during that period consisted of making studies and drafting reports relating to the accounting and financial aspects of applications filed with the Commission by public utilities and licensees requesting authority for sale, merger, consolidation or other disposition of facilities or issuance of securities. I was also required to attend hearings relating to such applications.

"In addition to the foregoing, I assisted the Chief of the Division of Finance in preparing reports upon statistical studies of the financial characteristics of the electric utility industry in the United States and in preparing reports and charts pertaining to the intercorporate relationships of electric utility and holding companies, and supervised the office audit of annual reports filed by electric utilities.

"From September 1937 to June 1938 I also instructed evening classes in principles of accounting at the Strayer College of Accountancy, Washington, D. C.

"In September 1938 I accepted an appointment as Assistant Professor of Accountancy in the College of Commerce and Business Administration of the University of Illinois. During the ensuing school year I instructed classes in accounting principles and auditing procedure, respectively, carried on research in French accounting literature, and completed an article entitled 'Capital Gains and Losses in Accounting,' which was published in the June 1939 issue of the 'Accounting Review.'

"In June 1939 I resigned from the faculty of the Uni-

versity of Illinois to accept my present position as Principal Examiner of Accounts in the Commission's Division of Accounts. I was immediately assigned to duty in connection with the investigation of Canadian River Gas Company, et. al. (Docket G-124)."

Q. During the period of time that you worked on this assignment did you have occasion to personally examine the books and records of Colorado-Wyoming Gas Company?

A. Yes, sir, I did.

Q. In connection with that examination did you prepare a written statement of the corporate history of that company?

A. Yes, sir, I have.

Q. Mr. Smith, will you read that written statement?

A. This written statement pertains to the general corporate history of Colorado-Wyoming Gas Company and reads as follows:

"Incorporation.

"Colorado-Wyoming Gas Company was incorporated December 1, 1925 under the General Corporation Laws of the State of Delaware. The company commenced business with ten shares of common stock without par value, the original subscribers being J. M. Satterfield, E. E. Craig, and A. L. Raughley. On the date of incorporation, December 1, 1925, the original subscriptions were transferred to the following persons who were thereupon elected directors of the corporation:

"Dale B. Carson	1 share
"Robert F. Wilson	1 share
"W. T. Bauer	1 share
"Chas B. Wedum	1 share
"Thomas A. Wallace	6 shares.

"The company's articles of incorporation provide for perpetual existence. Subsequent to incorporation the company was qualified to do business in the States of Colorado and Wyoming.

"History of Capitalization.

"The Certificate of Incorportion of the Colorado-Wyo-

ming Gas Company provided that the total authorized capital be 5,000 shares without nominal or par value. It further stipulated that the corporation commence business with 10 shares.

"On December 10, 1931 the Certificate of Incorporation was amended so as to increase the authorized capital to 50,000 shares without nominal or par value.

"The original subscription of 10 shares on December 1, 1925 was at the rate of $100 per share. The corporation thus started business with an initial capital of $1,000. The offsetting charge was to the account 'Subscribers to Capital Stock.' On April 30, 1932 this account was closed and the charge of $1,000 transferred to the open account of Public Service Company of Colorado.

"Effective as of December 30, 1925, the number of outstanding shares of capital stock was increased from 10 to 5,000 shares but with no increase in the recorded value thereof. The following journal entry was spread upon the company's books under date of December 30, 1925:

" 'Investment (Contracts) $0

"To Capital Stock Outstanding $0
"To record issuances of 4,900 shares of capital stock for certain contract rights procured through the acceptance of H. O. Caster's offer to the directors of the company, December 18, 1925. • • •'

"The offer of H. O. Caster dated December 19, 1925, acceptance of which was approved by the Board of Directors of Colorado-Wyoming Gas Company on May 3, 1926, was worded as follows:

" 'December 18, 1925

" 'To the Board of Directors of Colorado-Wyoming Gas Company

" 'Gentlemen:

" 'I hereby offer to cause to be entered into with your company a certain contract between Fort Collins Producing Corporation and your company respecting, among other

things, the delivery of natural gas by the Fort Collins Producing Corporation to your company in substantially the form hereto attached, marked 'Exhibit A' and made a part hereof and to also transfer, or cause to be transferred, to your company a certain right of way for pipe line from Wellington Structure, in Larimer County, Colorado, to Fort Collins, Colorado, a distance of approximately fourteen (14) miles, together with the certain pipe line constructed, or now being constructed, upon said right of way, with all the appurtenances and appliances thereunto belonging: said rights of way being more particularly shown on map hereto attached and marked 'Exhibit B.'

"'In consideration of the above, your company is to issue to me, or to my nominee or nominees, four thousand nine hundred and ninety (4,490) shares of the common stock of your company, without nominal or par value, to be full paid and non-assessable, and in addition, to pay to me, or to my nominee or nominees, the sum of seventy-six thousand eight hundred dollars ($76,800) in cash.

H. O. Caster.'

"Based upon the language of the company's journal entry dated December 30, 1925 quoted above, it appears that 4,990 shares of capital stock were issued as consideration for the contract rights acquired from H. C. Caster, although no money value was assigned on the books to either the stock issued or the contract acquired. It is noted that the amount of $76,800, representing approximately the original book cost of the physical property described in H. O. Caster's offer of December 18, 1925, was never actually paid in cash by Colorado-Wyoming Gas Company. Indebtedness to cover this amount was set up by a charge to the open account of Henry L. Doherty & Company (which had previously been credited for the construction cost of the property) and a credit to notes payable due Henry L. Doherty & Company. All indebtedness to Henry L. Doherty & Company was forgiven as of August 31, 1931.

"From December 30, 1925 until December 21, 1931 the capitalization of the Colorado-Wyoming Gas Company remained at 5,000 shares of capital stock, without par value, having a total recorded value of $1,000. On December 21,

1931 a stock dividend of $1,500,000 was paid through issuance of 45,000 shares of stock at the rate of $33.33-1/3 per share. This increased the total capitalization of the corporation to 50,000 shares of no par value having a total recorded value of $1,501,000. There has been no change in the capitalization of the company since December 21, 1931.

"The surplus of $1,500,000 which was capitalized by issuance of the above-mentioned stock dividend included $1,139,075.67 of donated surplus resulting from the forgiveness of indebtedness, as of August 31, 1931, by Henry L. Doherty & Company. The balance capitalized, or $360,924.33, represented earned surplus arising from operations prior to December 21, 1931.

"Inasmuch as the capitalization of the Colorado-Wyoming Gas Company has never included any securities other than the no par value stock referred to above, it may be said that the corporation financed its construction program principally through cash advances from Henry L. Doherty & Company. The capitalization of $360,924.33 of earned surplus is evidence of investment in fixed assets of funds obtained from earnings. It would appear also that a considerable portion of the funds resulting from the accumulation of a depreciation reserve has been invested in fixed assets.

"History of Stock Ownership.

"Stock certificate No. 1 of the Colorado-Wyoming Gas Company, representing the original subscription of 10 shares, was issued in the name of James T. Pathe under date of May 3, 1926. On the same day a certificate for 4,900 shares was issued in the name of Ernest H. Johnston. The corporate minutes show that Ernest H. Johnston was designated as the nominee of H. O. Caster, to receive the shares which the company was obligated to issue to H. O. Caster under the terms of an agreement dated December 18, 1925 (mentioned on Page 2 hereof.).

"As of December 18, 1931, the outstanding shares, 5,000 in number, were transferred to the name of Public Service Company of Colorado.

"As of December 21, 1931, the stock dividend in the amount of 45,000 shares was represented by a certificate issued in the name of Public Service Company of Colorado.

"Mr. H. P. Davis, Secretary of the Colorado-Wyoming Gas Company, under date of September 29, 1939 furnished the following written statement in respect to the ownership of the beneficial interest in the stock of Colorado-Wyoming Gas Company during the period from December 1, 1925 to December 18, 1931:

"'Cities Service Company was the beneficial owner of the 5,000 shares of Colorado-Wyoming Gas Company's capital stock from December 1, 1925 to September 1, 1931. These shares were represented by:

"'Certificate No. 1 for 10 shares, issued May 3, 1926, in the name of James T. Pathe and

Certificate No. 2 for 4,990 shares, issued in the name of Ernest H. Johnston.

"'As of September 1, 1931, the above stock was sold to Public Service Company of Colorado and, from that date to December 18, 1931, Public Service Company of Colorado was the beneficial owner. * * *'

"The outstanding 50,000 shares of stock remained in the name of Public Service Company of Colorado until February 6, 1932. As of that date they were transferred to the name of 'Chase National Bank of the City of New York, Successor Trustee under Public Service Company of Colorado Trust Indenture dated September 1, 1923.' The certificates surrendered for transfer by Public Service Company of Colorado bear the following notation in connection with the transfer:

"'This transfer is made solely to pledge the shares represented by this certificate as collateral under Public Service Company of Colorado Trust Indenture dated September 1, 1923.

"'Public Service Company of Colorado
By E. E. McWhiney (Signed)
Ass't Treasurer.'

"According to the stock certificate book and the stockholders' ledger, no changes in the stockholders of record have taken place since February 6, 1932.

"Affiliation with Henry L. Doherty.

"The following letter was received in response to the Examiner's inquiry as to the control of Henry L. Doherty & Company:

"'New York, May 1, 1940

"'Re: Estate of Henry L. Doherty

"'Kenneth L. Smith, Esq., * * *'"

That "Esq." is a mistake.

"'* * * c/o Federal Power Commission, Central Savings Bank Building, 15th & Arapahoe Streets, Denver, Colo.

"'Dear Sir:

"'Our client, Mrs. Grace R. Doherty, Executrix of the Estate of Henry L. Doherty, deceased, has brought to our attention a letter from Mr. H. P. Davis, Secretary of Colorado-Wyoming Gas Company, to Henry L. Doherty & Company.

"'Mr. Davis enclosed with his letter a copy of a letter which he stated he received from you, dated March 9, 1940, asking among other things for a 'list of all officers, directors and members of the Executive Committees' of Henry L. Doherty & Company, and also for a 'table showing the voting stock control' of Henry L. Doherty & Company.

"'Henry L. Doherty & Company was not a corporation but a partnership, formed many years ago by Mr. Henry L. Doherty and Mr. Frank W. Frueauff. The latter died in the year 1922, and thereafter Mr. Doherty, the surviving partner, carried on the business as the sole proprietor thereof, as permitted by Section 80 of the Partnership Law of this State. During the last few years of Mr. Doherty's life, the business of Henry L. Doherty & Company was in-

active, due to Mr. Doherty's ill health. He died on December 26, 1939.

"'We trust that this information answers your inquiry.

"'Very truly yours,

"'WHITE & CASE (Signed)'

"Henry L. Doherty was a director and the President of Colorado-Wyoming Gas Company from May 3, 1926 until April 1937, except for a brief period in 1936, according to the company's minute book."

Q. Mr. Smith, the matters you have just stated in this written statement were obtained by you from your examination of the books and records of Colorado-Wyoming Gas Company?

A. That is right, supplemented by the requests which I made to the company through its officials.

Q. I see. And the original of that letter from White & Case is in your possession and you have it there available if someone should desire to see it?

A. I have that letter here.

(Vol. 33, pp. 4600-4614.)

* * * * *

Q. Any other pipe line companies—gas pipe line companies?

A. Yes, from about 1930 to 1934 I was in charge of the income tax returns of practically all of the subsidiaries of the Utilities Power & Light Corporation and they had one subsidiary in particular which had natural gas properties.

Q. What kind of properties?

A. Production, transmission and distribution.

Q. What was that company?

A. The Central States Power & Light Corporation.

Q. What did you do there?

A. Well, during that period from 1930 to 1934 my duties in connection with these natural gas companies was solely in connection with their income tax returns.

Q. Did you have any more natural gas companies after that?

A. Yes.

Q. What are they?

A. From 1934 to 1936, as a top senior accountant of the firm I was with at that time, I had the general supervision of the audits of these same companies that I have mentioned there, and also another company, the Missouri Natural Gas Company which was operated in the state of Missouri.

Q. Owned by the same holding company?

A. Yes, that's right.

Q. What other natural gas companies did you have anything to do with?

A. Colorado-Wyoming Gas Company.

Q. That was the next?

A. Yes, sir, I believe that is right.

Q. Now, in all this period from 1928 to 1936, you had simply made formal audits, as I understand of these concerns, the same as you would have made audits of any other concern, industrial or otherwise, which did not mean that you were acquiring any particular knowledge of the natural gas business, would it?

A. I wouldn't agree on that. I think in making an audit, it does require some knowledge of the business.

Q. I mean aside from elementary knowledge, did you acquire any further knowledge of the business as such?

A. Well, what type of knowledge do you refer to?

Q. Well, supposing you audit a large drygoods store. Do you know the drygoods business?

A. Why, I wouldn't say that I knew everything about it, but I would have to know quite a bit about it.

Q. What kind of different businesses do you know?

A. I would have to have quite a bit of it before I could complete the audit.

The Trial Examiner: Let him answer the question, Mr. McCreery. You are chopping him off before he completes his answer.

Mr. McCreery: Pardon me.

The Witness: I am not answering this assuming that I know all about any business.

By Mr. McCreery:

Q. Well, I understand that, but I will put the question in a different way to you:

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As a matter of fact, in your auditing operations of any particular line of business, you simply learn the current terms used in the business but do not make a study of the business as such for your operations which have been as diversified and scattered as yours appear to have been?

A. I think you make quite a lot of study of the business.

Q. So you think you know the natural gas business pretty well?

A. I didn't say that.

Q. I am asking you if you think so.

A. I think I know enough about it to prepare any accounting exhibit that would be required.

Q. So you limited it to an accounting proposition, purely?

A. Yes, there would be no reason for me to go beyond that.

Q. I didn't think so, but I wanted to find out.

Did the Central States Power & Light have any other natural gas companies aside from these that you have just mentioned, the Pawnee, Cushing and the Mullendore?

A. Well, the Central States ultimately acquired those companies.

Q. Yes, I know, but did they have any other natural gas pipe line companies?

A. Yes, they did. They acquired quite a number of properties at that time. One was acquired—the Title Osage lease from the Tidewater Oil Company, I believe it was, and there were one or two other properties acquired at that time and made into a little system down there which I don't recall the names of the predecessor companies.

Q. The Central States Power & Light was a holding company for these other gas companies?

A. No, it was an operating and holding company.

Q. Where were their properties?

A. Well, their electric properties—

Q. I mean their gas properties.

A. Well, their gas properties were all within the state of Oklahoma.

Q. Do they have pipe lines or distribution companies, or what?

A. They have production, transmission and distribution.

Q. And how many operations do they have? how many different enterprises, do you know?

A. Well, as near as I can recall, at the time I was associated with that audit, they distributed in about 12 or 15 small towns in Oklahoma.

Q. It seems that you had a good deal of relation to the auditing of accounts in connection with the Utilities Power & Light from the period 1934 to 1936.

A. Yes, sir, I had.

Q. Did you have anything to do with the establishing of the accounting systems used by that company?

A. Not—that wasn't directly my responsibility.

Q. I asked you if you had anything to do with it. Whether directly a responsibility or not, was not the question.

A. Well, I think I can answer yes, I did have something to do with it.

Q. If so, what?

A. From time to time the audits of those companies, the auditing firm that I was with made suggestions about the system.

Q. Of accounting?

A. The system of accounting, yes, sir, and to that extent I feel that I did have something to do with their system of accounting.

Q. Some of those suggestions came through you personally and your firm, through you to your firm, and then to the Utilities Power & Light?

A. Yes, sir.

Q. Now, in connection with your statement that was read into the record, the same Page 3 of your statement:

"All indebtedness to Henry L. Doherty & Company was forgiven as of August 31, 1931."

Do you mean to say that the indebtedness was just wiped off without payment by anybody?

A. It wasn't paid by the Colorado-Wyoming Gas Company.

Q. I didn't ask that question. I asked you whether it was paid by somebody else.

A. The books of the Colorado-Wyoming Gas Company did not show whether it was or not.

Q. I asked you whether you know whether it was paid or whether you know if it was not paid.

A. I don't know. If I didn't obtain it from the books I wouldn't know.

Q. There are a number of things you didn't obtain from the books. That is the reason I asked you that question. Do you know whether it was paid or not?

A. No, I don't know.

Q. Well, then, a little further down you talk about $1,139,075.67 of donated surplus. What do you mean by that?

A. Donated surplus.

Q. Well, I asked you, who gave that—you mean that was given to the company?

A. Yes, through the cancellation of that indebtedness.

Q. And yet you just said you didn't know whether that indebtedness was cancelled because it was paid for or not.

A. Well, I took your question to mean whether I knew whether anyone besides Colorado-Wyoming Gas Company had paid the indebtedness. I know that Colorado-Wyoming Gas Company did not pay the indebtedness.

Q. You mean to say that it did not pay it directly or indirectly?

A. They did not pay that account. The account was forgiven and they declared a stock dividend from that surplus.

Q. Mr. Smith, what you found on the books was that statement, wasn't it? Now, did you check the books to see whether or not there was that amount of money ultimately put up by Colorado-Wyoming Gas Company?

A. The Colorado-Wyoming Gas Company never did pay that indebtedness in cash as it existed on August 31, 1931 to Henry L. Doherty & Company.

Q. You say they never did pay it in cash?

A. No, sir, not in cash.

Q. Well, I still ask you whether they paid it directly or indirectly and if you don't know, say so.

A. They never did pay it.

Q. Directly or indirectly?

A. That's right.

Q. So that they got a gift of their system, is that what you mean to say?

A. They got a gift of $1,139,075.67.

Q. That was a gift, is that so? That's what you undertake to say, is it?

A. That amount of money was donated.

Q. I say, they got a gift to that amount of money from whom?

A. Well, it was money that their books showed that they owed to Henry L. Doherty & Company. Now, as to who ultimately made the gift, I don't know, but I do know that that indebtedness was canceled.

Q. You do know it was a gift, do you?

A. Well, I know that it was donated.

(Vol. 33, pp. 4625-4633.)

* * * * *

Now, what was the amount of the Henry L. Doherty account that was forgiven on August 31st?

A. $1,139,075.67.

Q. Now, is it not a fact that on the following day the stock of the Colorado-Wyoming Gas Company in the amount of 50,000 shares was issued to the Public Service Company of Colorado?

A. My statement shows that Public Service Company of Colorado became the owner—at least the beneficial owner of those shares on September 1, 1931. I am not sure that I can answer just when those shares were issued in the name of Public Service Company of Colorado, but the statement given to me by Mr. Davis is on Page 4, which is to the effect that as of September 1st, 1931, Public Service Company of Colorado did become the beneficial owner of the shares.

Q. What you say—you say it was sold to Public Service Company of Colorado, don't you?

A. You mean that is the interpretation to be placed on this?

Q. That is what this says. I suppose that is the interpretation to be placed on it.

A. Where?

Q. On Page 4.

A. I don't see that exact wording.

Q. You look on Page 4 and you will find it.

A. You mean in Mr. Davis' letter?

Q. Which you quote; yes.

A. It says: Here is what the letter says:

"As of September 1, 1931, the above stock was sold to Public Service Company of Colorado."

Q. That is what I am referring to.

A. That is the information Mr. Davis gave me.

Q. Now, in your auditing examination of this company, did you relate these two transactions of two succeeding days as a part of one transaction at all, in your own mind?

A. They were probably related.

Q. I asked you if in your mind you did relate them.

A. The coincidence was observed.

Q. I asked you if you related them as a fact as having a relation, one to the other. If you didn't, say so. That's all I am asking you.

A. Well, I think I can reasonably assume that the transactions were related.

Q. I said, did you at the time you made this statement up and in connection therewith, give a relationship to them as constituting a part of one transaction?

A. I didn't consider them as one transaction because I didn't have all of those facts before me as to what took place on the books of Public Service Company of Colorado.

Q. You had all the facts before you that you allege to state in this statement when you prepared this statement, didn't you?

A. Yes.

Q. Did you prepare this statement?

A. Yes.

Q. You had all those facts before you at that time, didn't you?

A. Yes.

Q. And yet you treat them as separate transactions, unrelated here, do you not, in your statement?

A. I don't believe so. I have stated all the facts that I was able to get together and put them in the statement.

Q. You relied, of course—or you wouldn't have quoted it—upon the letter received from the Secretary of the Colorado-Wyoming Gas Company, Mr. Davis, with respect to that transaction?

A. Yes. My purpose in that section there was to outline the history of the stock ownership of Colorado-Wyoming Gas Company. That was the only purpose I had in that particular section.

Q. Well, now, you had another purpose over here on Page 3, when you were talking about donated surplus and all that sort of thing, didn't you? What was your purpose on Page 3, then?

A. Which paragraph do you refer to there, Paragraph 3?

Q. Yes, Paragraph 3, for instance, and Paragraph 4 on Page 3.

A. My purpose in that section was to give a history of the capitalization and to show the sources of that capitalization.

Q. But you went further than to give a history of capitalization. You specified what you thought the character of the capitalization was by calling it a donated surplus, and in doing so you did not relate it at all to the purchase for a million and a half dollars of the stock of Colorado-Wyoming Gas Company at the same time by Public Service Company of Colorado, did you?

Mr. Lange: I think that is about two or three or four questions in one. If counsel will break those up into the component parts, I think the witness can follow him.

Mr. McCreery: Read the question.

Mr. Lange: All of it.

The Trial Examiner: Do you want him to answer that yes or no?

Mr. McCreery: No; I don't want a yes or no answer. I want an explanation. Mr. Examiner, I am seeking an explanation of this document here that has been read into the record.

The Trial Examiner: Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Trial Examiner: Well, I think Mr. Smith—is that question clear to you?

The Witness: I disclosed the facts. I didn't assume what Public Service Company of Colorado had done.

By Mr. McCreery:

Q. Well, where did you get the facts of the supposed

donated surplus? Where did that fact come to your attention?

A. The records reflected the fact that that indebtedness was canceled and that a credit was made to the surplus account because of that transaction.

Q. As a matter of fact, Mr. Smith, as an auditor you were put on notice when you had all the facts that there are set forth in this statement to see whether this was all one transaction or not, were you not, put on that notice?

A. Not in the way I have used them here.

Q. Well, how have you used them here, Mr. Smith?

A. I have presented a history of the capitalization of Colorado-Wyoming in one section and I have put the facts in there, and then I have presented another section which shows a history of the stock ownership of that company, and I put a set of facts in there.

Q. And those sets of facts are unrelated in your mind?

A. I haven't said that. They speak for themselves.

Q. Are they unrelated?

A. If I wanted to make an assumption I could assume that they are related.

Q. Wait a minute. I asked you whether they are or not related and I want a yes or no answer.

A. I don't know whether they are related, but I would assume that they probably are.

Q. I still want a yes or no answer.

The Trial Examiner: He may answer in his own way, Mr. McCreery.

The Witness: I haven't examined the books of the Public Service Company of Colorado.

By Mr. McCreery:

Q. Well, now, let's assume then on your basis that they are related, then. Have you given a true statement of the history of the corporate organization on Page 3 when you ignore the facts set forth in your same statement on Page 4 with respect to stock ownership and how it was issued?

A. I believe that I have set forth the facts. I only wanted to put in there facts that I could support as facts and I wanted to leave the conclusions up to somebody else.

Q. But you didn't do that, did you?

A. I think that I did.

Q. Is Paragraph 4 on Page 3 a statement of fact or does that involve several conclusions of your own?

A. Well, that is a conclusion that relates to the facts of the history of the capitalization.

Q. So that you went there further than a statement of facts; that is a conclusion, as you state?

A. Yes, that—

Q. Now—

Mr. Lange: Let him finish, please.

The Witness: That is a conclusion that relates to the information data, the facts that are on the books of the Colorado-Wyoming Gas Company. You must keep in mind I didn't make an examination of the Public Service Company of Colorado's books.

By Mr. McCreery:

Q. Let me ask you a question: Here is a statement as of September 1, 1931, "The above stock was sold to Public Service Company of Colorado," and so forth. Supposing you had checked the records of Public Service Company of Colorado and found that to be a fact which you set forth here as a fact, would you know any more from those records than you know now?

A. Yes, I would have known what they paid for the stock and I would have known all about the transaction. As it is I don't know anything except what is stated in my statement, which I got from Mr. Davis, and the only reason I got the statement was I wanted to show from the beginning of the company to the present date what was the history of ownership of that stock.

Q. Mr. Smith, you didn't head your statement up with such corporate history of Colorado-Wyoming Gas Company as on the book entries of the Colorado-Wyoming Gas Company, you headed it generally as a corporate history and you are undertaking to speak of facts irrespective of the books, and there are numerous facts?

A. Where, for instance?

A. I showed you on page 3.

A. This Page 3, that fourth paragraph, that is a very reasonable conclusion; that is, there couldn't be any other conclusion.

Q. There couldn't be any other conclusion?

A. No. That is just a matter of accounting analysis of what I had disclosed.

Q. Would your accounting curiosity lead you to inquire as to the relation between the transactions of August 31, 1931 and September 1, 1931?

A. There was a missing link there that wasn't available to me.

Q. Did you try to get it?

A. I didn't consider that I was obligated to try to get it because I merely set forth the facts here as to the history of the capitalization in one section and the history of the stock ownership in another.

Q. Which are wholly unrelated, are they?

A. I haven't said they are.

Q. I asked you how they were. I wanted to know how you approached this as an auditor; that is what I am after. I want to know if you took all facts, some facts, or selected your facts, or how you approached the auditing problem.

A. I took all of the facts I found on the books of the Colorado-Wyoming Gas Company and even obtained a few more.

Q. But you didn't obtain this fact that sticks out as an auditor should?

A. It was of no interest to me.

Q. It was of no interest to you as an auditor? I judged that?

(Vol. 33, pp. 4637-4646.)

* * * * *

Mr. McCreery: I have another question I would like to ask before I deal with this statement.

Q. You just stated, Mr. Smith, that you didn't undertake to describe the physical facilities of the company in connection with this so-called history of capitalization. Did you ignore the cost of those physical facilities in connection with your financial study set forth in this statement?

A. No, because I made a rather complete examination of the books and records.

Q. That doesn't appear, however, in this statement.

A. The cost of the plant would not appear in this statement. It isn't the history of the plant, it is a general corporate history.

Q. It is a history of investment and capitalization?

A. It is broken down in separate parts and sets forth first the details as to incorporation; second, the history of the incorporation; and, third, history of the stock ownership; and the last section discloses the evidence as to the affiliation with Henry L. Doherty. Putting those all together it has been labeled a general corporate history.

Q. That is just the name of it?

A. That is what I have called it.

(Vol. 33, pp. 4651-4652.)

* * * * *

Q. Mr. Smith, you have heretofore testified in this proceeding in connection with Exhibit No. 137?

A. Yes, sir.

Q. And at the time that statement was read into the record, certain information was requested with reference to Paragraph 3, or, rather, the second to the last paragraph on Page 3 of the statement, was there not?

A. There were certain requests Mr. McCreery made. I don't know that they pertained specifically to that paragraph. I have a list of the things he asked me to get.

Q. Do you have them ready to supply for the record now?

A. Yes, sir, I have.

Q. Very well.

A. One request was for the balance the Colorado-Wyoming Gas Company had in its plant account August 31, 1931. I found that balance per books, without giving effect to any of the items to which was taken exception in Commission's Exhibit No. 199 the balance per books at that date without adjustment, was $1,829,949.57.

Request was also made and I agreed to furnish the comparable figures for December 31, 1931, and that figure on a comparable basis was $1,821,171.20.

Cross Examination.

By Mr. McCreery:

Q. That is shown by the books of the company?

A. Yes, sir, without any adjustment.

A request was also made and I agreed to furnish for the record the total cash advances which had been made by

Henry L. Doherty & Company to the Colorado-Wyoming Gas Company and which were involved in the balance of $1,139,075.67 which was forgiven as of August 31, 1931, and which for the time being became donated surplus to the Colorado-Wyoming Gas Company and was later transferred to its capital stock account through the issuance of a stock dividend.

I find that the total cash advances made by Henry L. Doherty & Company to Colorado-Wyoming Gas Company during the period from March 1926 to and ending June 25, 1931, amounted to $1,256,500.

In addition to that, Henry L. Doherty & Company advanced a $5,000 working fund to C. J. Shortess who was the agent in the early part of the construction. That was entered upon the records in January 1926. The advance was apparently made prior to that date.

There are also amounts paid by Henry L. Doherty & Company between 1925 and August 1931 of approximately—well, in the total it is something in excess of $200,000, but those weren't cash advances to Colorado-Wyoming Gas Company as they were just amounts which Henry L. Doherty & Company paid and included in this fiscal agent account which was later forgiven.

On the other hand I found that Colorado-Wyoming Gas Company made cash remittances or payments on account to Henry L. Doherty & Company at various times from whenever they happened to have surplus cash, January from 1927 up through August 1931. Those total repayments on account consisted of actual cash remittances totaling $531,600.

Q. These figures are all as reflected on the books of the company, are they not?

A. Yes, sir, I got all of these from the books during the course of the examination.

As I recall, I believe that all of the additional information you requested me to furnish has been given.

Q. There is one question further and I think I asked you for this at the time I asked you for the information.

Do you know as a matter of fact that this so-called forgiven account was taken over and paid by the Public Service Company of Colorado?

A. I held some information on that which I found by reviewing my working papers. I will show you exactly what I had on that. Of course, it wasn't particularly concerned with what happened to the Public Service Company of Colorado—

Q. I understand that but I just asked you whether you knew that to be a fact.

A. The only information I have on that particular angle of the transaction; that is, anything that took place outside of the books of the Colorado-Wyoming Gas Company, was what I got out of the Federal Trade Commission's reports, Volume 66, and it states in there on Page 953 at one place:

"On September 1, 1931 Cities Service Company transferred the stock of Colorado-Wyoming Gas Company to Public Service Company of Colorado, a subsidiary of Cities Service Power & Light Company, which in turn is a subsidiary of Cities Service Company, for $2,675,000. This price reflected an intercompany profit to Cities Service Company from the transaction of $1,027,429.57."

Q. Now, if you will go back to my question. Do you or do you not know whether this particular account which you say was forgiven was in fact paid by Public Service Company of Colorado?

A. That is what I am getting around to.

Q. All right.

A. It is my interpretation this $2,675,000, assuming the Federal Trade Commission data are accurate—

Q. You are just giving the data you have?

A. From the Federal Trade Commission's reports.

My interpretation is that the $2,675,000 which Public Service Company of Colorado paid for the stock of Colorado-Wyoming Gas Company in effect covered the payment of this debt to Henry L. Doherty & Company or the Cities Service Company, whichever one had put the money. Apparently Cities Service Company put the money up to Henry L. Doherty & Company, and Henry L. Doherty & Company put it up to Colorado-Wyoming Gas Company.

Q. And the Public Service Company in the acquisition and purchase of the stock as you have it here took over and paid this account referred to in Exhibit No. 137, that is your understanding of it?

A. I could make that interpretation of it, I think. It was covered in the $2,675,000 they put up.

Q. That is your understanding of what took place, just as a factual matter?

A. Yes, based upon the Federal Trade Commission data. Of course, that doesn't have any effect upon the accounting on the books of the Colorado-Wyoming Gas Company.

Q. I understand that. I am just asking you about the transaction, as to what was involved at the time of this so-called forgiveness of debt.

A. That is what I had on it and I find I extracted those notes as one of the first things of the audit in June 1939. That is one of the first notes I made.

Mr. Lange: Was there anything else with reference to that written statement, any further explanation that you have to make there concerning Exhibit No. 137?

The Witness: You might turn to Page 3, the next to the last paragraph on that page, or the last paragraph in that particular section.

I think that statement was challenged in my cross examination when I first offered the exhibit. I didn't have the means at that time with me of showing that my statement was true. I make this statement: "Inasmuch as the capitalization of the Colorado-Wyoming Gas Company has never included any securities other than the no par value stock referred to above—" meaning $1,501,000—"it may be said the corporation financed its construction program principally through cash advances from Henry L. Doherty & Company."

Of course at that point I am referring back to this debt that was forgiven and to the advances which I referred to earlier in my testimony today.

Then I make the statement: "The capitalization of $360,924.33 of earned surplus is evidence of investment in fixed assets of funds obtained from earnings."

I take it that is more or less self-evident now in view of the fact I have shown the total advances from Henry L. Doherty & Company were somewhat less than the amount which eventually went into stock, and in addition the Colorado-Wyoming Gas Company had repaid more than a half a million dollars of those advances. Of course, it is my position, which I think is absolutely self-evident, that the stock dividend of $1,500,000 consisted of the donated surplus of $1,139,075.67 resulting from the forgiveness of the debt and that the rest of it, the remainder of it, must have consisted of earned surplus which the company had earned prior to December 1931 in the amount of $360,924.33.

Then I make the further statement in that paragraph:

"It also would appear that a considerable portion of the funds resulting from the accumulation of a depreciation reserve has been invested in fixed assets."

That statement was challenged and not having a balance sheet before me at the time I was not able to show exactly why that statement is true.

Taking the company's balance sheet in their Exhibit No. 242, I think I can demonstrate in just a few words why that last sentence is absolutely true and correct. This balance sheet, the last two pages in Exhibit 242, carried down to December 31, 1940, shows—

Mr. Lange: From what exhibit are you reading?

The Witness: Exhibit No. 242, the company's exhibit, Mr. Davis' latest balance sheet.

It shows a total ultimate plant investment per books of approximately $1,900,000. For our purposes here at this point we can assume that that statement is the correct amount for plant, even though our Exhibit 199 shows and identifies the writeups in that—

By Mr. McCreery:

Q. What do you mean by writeups?

A. For example, your interest on excess capacity is a write-up pure and simple.

Q. You mean that is what you call it?

A. No, sir.

Q. That is what you are defining it as now?

A. It is a writeup—

Q. I just wanted to know what you were referring to.

A. —and the inter-company fee of some $82,000 to Henry L. Doherty & Company, although that did represent an expenditure on the part of Colorado-Wyoming Gas Company, we have treated that as a writeup effected through the medium of an affiliated company. Those are the two principal items. Any other items would be relatively small.

Q. You just designated and called it that name for the purpose of your exhibit, called it a writeup?

A. If I didn't think they were writeups, I wouldn't call them writeups.

Q. All right.

A. Now if you will turn to the liability side we find that the capital stock account is $1,501,000 and it is conceded, that is, the facts show that the stockholders either put that money into the company through actual cash advances indirectly or by dividends which could have been paid to the stockholders from the earned surplus which was capitalized, so it is accurate to say that the stockholders do have $1,500,000 in the business in capital stock account: however, turning back to the asset side we find an item for investment in associated companies of which the record in this case will show that approximately $98,000 represents a loan to the stockholders, the Public Service Company of Colorado.

Therefore, roughly speaking—

Q. Upon which interest is annually paid by Colorado Public Service Company of Colorado?

A. Yes, I merely—I am merely getting down to the fact that the stockholders have invested in the net assets of this company $1,400,000, although the plant account shows $1,900,000.

Q. That is your construction of it?

A. That is absolutely the fact.

Q. I mean, that is your construction?

A. It is the construction of any accountant that knows how to read a balance sheet.

Q. Is that so? It is your conclusion?

A. It is a fact. Here it is in black and white. I don't think it is a conclusion. I don't think an analyst who takes a balance sheet and reads it properly and correctly could draw a conclusion it was otherwise.

It is $500,000 spent on plant account, and referring back to the liability side of the balance sheet there is no place that $500,000 could have come from except through the investment of the funds that were obtained in building up a depreciation reserve. I think that that logically follows if one understands how the depreciation reserve operates.

The company had on its books $512,000 for reserve depreciation of gas plant at December 31, 1940. That indicates that the company had collected in its revenue from its customers $512,000 to cover an item that it hadn't taken in the expense accounts each year for depreciation and the revenue which came in covering depreciation was cash that was not required to meet current operating or maintenance expenses. It was sort of a reimbursement to the company for a part of its plant.

Now, if it had not expended that depreciation reserve—the funds represented by the depreciation reserve on its plant account or some other assets, of course it would be represented in cash. It couldn't have been paid out in dividends for the reason that the surplus after the deduction of the depreciation as an expense wasn't available to pay out for dividends and there would have been a tendency to have accumulated a cash balance, but instead the plant account has been financed and has had its growth partly from the reinvestment of funds which were obtained from the customers representing the accrual to depreciation for depreciation reserve. I think that concludes my answer to that question.

Redirect Examination.

By Mr. Lange:

Q. Just one question I had to ask you and then I am through on that. I notice that your reserves for depreciation are set up under the heading "Reserves." In your opinion as an accountant, is it proper to treat reserve for depreciation as a liability on the balance sheet?

A. No, it is not. The reserve for depreciation being on that side of the balance sheet is one of the reasons why the heading for that side of the balance sheet in this system of accounts is called liabilities and other credits. The reserve for depreciation is one of the other credits that is put on that side of the balance sheet for convenience.

I think that anyone who perceives that the reserve for depreciation as being a liability would indicate clearly that he had a misconception of one of the fundamentals of accounting and that he did not know how to read a balance sheet. The reserve for depreciation measures the decline in value of the plant assets because of the factors that are operating to cause depreciation such as wear and tear and any other factors that operate to eventually send that plant to the junk heap, and from the standpoint of accounting principle, the credit reflected in the reserve for depreciation might just as well be credited to the plant account itself. It is only for convenience of retirement accounting and depreciation accounting that the reserve for depreciation is carried in a separate credit account.

If you are relying entirely on accounting principles and not seeking the convenience, it would be just as accurate to credit the provision for depreciation directly to the plant account, and I have actually seen it done under some systems of accounting; that is, under some sets of books.

(Vol. 86, pp. 12860-12871.)

This Agreement made and entered into this 3rd day of October, A. D. 1929, by and between Colorado Interstate Gas Company, a Delaware corporation, hereinafter called the Seller, party of the first part, and Colorado Wyoming Gas Company, a Delaware corporation, hereinafter called the Buyer, party of the second part.

Whereas, the Seller now has undisposed of and available for sale, in and through its pipe line, a supply of natural gas in excess of the deliveries now required of it, under commitments heretofore made by it and particularly those certain contracts entered into by it with Public Service Company of Colorado and The Pueblo Gas and Fuel Company, both of date of 3rd day of January, 1928, and a certain application of natural gas by the Colorado Fuel & Iron Company made to, and after agreed modifications, accepted by Ford, Bacon & Davis, Inc. and assigned June 5th, 1928 to and accepted by Seller with the consent of said Colorado Fuel & Iron Company, and the Seller is now able to deliver such gas to the Buyer and the Buyer desires to purchase and receive from the Seller natural gas, as hereinafter provided, and

Whereas, the Buyer is about to expend substantial sums to prepare and equip itself to connect with and make such deliveries of natural gas from the facilities of the Seller as the Buyer may require to satisfy the present and future demands of its customers in northern Colorado and southern Wyoming, as hereinafter provided, and

Whereas, thereafter the Buyer will be able by reason of its pipe line connection with the pipe line of Seller to render emergency service to Seller for the maintenance of its deliveries to Public Service Company of Colorado at Denver, Colorado, in the event of a temporary breakdown of Seller's pipe line and to the extent of natural gas available to the Buyer from sources of supply other than the Seller, in excess of the requirements of the Buyer's customers, including distributing customers, for domestic purposes.

* * * * *

First: The Seller agrees to sell and deliver and the Buyer agrees to purchase, take and pay for:

(a) Such natural gas as may be requisite to supply Buyer's requirements of natural gas to supply its present and future contracts and commitments to domestic consumers and its present and future contracts and commitments to companies distributing natural gas to domestic consumers, in cities, towns and communities in northern Colorado and southern Wyoming, now or hereafter connected to and served with natural gas from the pipe lines of the Buyer.

(b) Such amounts of natural gas as may be requisite to fulfill contracts and commitments made with the consent and approval of Seller by the Buyer for the sale of natural gas to consumers other than domestic consumers: and

(c) Such amounts of natural gas as the Buyer may desire for use in its compressing station or power plants, which amounts, if desired upon terms and conditions other than those applying to natural gas for domestic use hereunder, are deliverable only with the consent and approval of the Seller:

Provided, However, that the Seller shall not be obligated to sell and deliver natural gas in excess of the amount it has currently available for delivery, as hereinafter, in Articles Seventh and Eighth defined.

Second: The natural gas hereby agreed to be sold and purchased shall be delivered by Seller and received by Buyer at a metering and junction site and station to be located as follows; to-wit, three quarters of a mile north of the corporate limits of the Town of Littleton, Colorado, in the southwest quarter of the northwest quarter of Section Nine (9), Township Five (5) South, Range Sixty-eight (68) West, of the Sixth P. M., Arapahoe County, Colorado, hereinafter called "Arapahoe Station", at which station said natural gas shall be delivered from the pipe line of Seller to the pipe line of Buyer. The Seller shall there furnish, install, operate and maintain at its own expense, a regulating and measuring station properly equipped with orifice meters and recording gauges or other type of meter

or meters of standard style, as may be mutually agreed upon, the measurements of which shall fix the total amount of natural gas delivered by the Seller to the Buyer.

* * * * *

Third. The prices to be paid by the Buyer to the Seller for natural gas, so to be delivered hereunder, shall be as follows:

(a) During the period of this contract, the Arapahoe Station price which the Buyer shall pay the Seller for natural gas purchased and taken by the Buyer hereunder shall be:

17c per thousand cubic feet for the first five (5) years of the life of this contract

20c per thousand cubic feet for the second five (5) years of the life of this contract

22½c per thousand cubic feet for the third five (5) years of the life of this contract; and

25c per thousand cubic feet for the fourth five (5) years of the life of this contract,

except as next provided in sub-paragraphs (b) and (c) of this Article Third.

(b) For natural gas purchased by the Buyer from the Seller hereunder and delivered by the Buyer, directly, or indirectly, through its companies distributing natural gas purchased from Buyer, under commercial or industrial contracts, which contracts shall have been submitted to and approved by the Seller, the price payable to the Seller shall be fifty percent (50%) of the average price per thousand cubic feet chargeable by the Buyer to such commercial or industrial consumers under such approved contracts, including service, demand, minimum, commodity and other charges;

(c) For natural gas purchased by the Buyer from the Seller for use in any of its compressing stations or power plant or plants, the price payable to the Seller shall be fifty percent (50%) of the same price or scale of prices at which the Buyer is selling, under contracts approved by the Seller, natural gas to an industrial consumer using sim-

ilar quantities, unless the parties hereto agree from time to time that some other price shall apply.

* * * * *

Seventh. The Buyer acknowledges that the production of natural gas from wells and the transportation thereof over long distances are subject to accident, interruptions, diminution of pressure and failure of supply. The Seller, however, expressly agrees that it will exercise reasonable diligence and care to avoid any shortage or interruption of supply of natural gas hereunder, but it shall not be liable for any damage or loss that may be occasioned by any shortage or failure, or shortage of production of gas wells or fields, breakage or accident to lines or equipment, fires, strikes, riots, floods and other acts of whatever nature, due to causes beyond its control and interruptions by governmental or court orders. The Seller shall only be bound to furnish natural gas to the full extent that it may be able to do so through the exercise of reasonable care and diligence in the procuring of natural gas from its gas purchase contracts, and in the transportation thereof through its lines to the point of delivery and at such pressure and for such period of time as natural gas is available.

It is expressly agreed by the Buyer that the Seller may interrupt its service hereunder for the purpose of making necessary alterations and repairs to its pipe lines and compressing station equipment and machinery, but only for such time as may be reasonable or unavoidable, and the Seller shall give to the Buyer, except in case of an emergency, reasonable notice of its intention so to do, and shall endeavor to arrange such interruption so as to inconvenience the Buyer and its consumers, as little as possible.

Nothing herein contained shall in any way abridge the right of the Seller at any time to sell, transport and deliver natural gas under present contracts or contracts which may hereafter be negotiated, to others than the Buyer, or restrict or reserve the Seller's properties, or any part of them for the exclusive benefit of this contract and it is expressly understood that this contract is subject to the obligations to sell and deliver natural gas imposed upon the Seller by those two certain contracts heretofore entered into by it, with Public Service Company of Colorado *the*

The Pueblo Gas and Fuel Company both of date of 3rd day of January, 1928. It is agreed that in case of shortage either temporarily or permanently, of natural gas and necessity for curtailment of service to any classes of consumers, the demands of domestic consumers of the Seller, the Buyer and/or of other distributing customers to which the Seller or Buyer may sell natural gas, are to be preferred over service to industrial consumers and of the amount remaining, deliveries, if any, for industrial consumers served by the Buyer shall be such part as the requirements of such industrial consumers bear to the requirements of industrial consumers of the Seller, the Buyer and of other distributing customers to which the Seller may sell natural gas; provided however, that such domestic consumers' preference and such right to receive natural gas for industrial users shall not be exercised so as to deprive the Colorado Fuel & Iron Company of the volume of natural gas needed to complete open hearth heats then in jeopardy and to keep its furnaces warm during extreme domestic demand upon the Seller's pipe line, or so as to deprive any other industrial or commercial consumer which requires a small proportion of its normal demand to prevent damage to its appliances.

Eighth. It is understood that the Seller obtains its natural gas for delivery hereunder, by purchase from the Canadian River Gas Company, under contract with that Company of date the 3rd day of January, 1928, which owns or holds under lease or contract large reserves of natural gas in the counties of Hartley, Oldham, Moore, Potter, Carson and Hutchinson, Texas, in what is known as the Amarillo gas field, and that the Seller shall not be required to supply hereunder natural gas from any other source, but the Seller shall have the right, if it so elects, to supply hereunder natural gas from other sources provided such other natural gas is not substantially inferior in quality to the natural gas then being purchased from the said Amarillo gas field. The Seller shall not renounce the right it has under and by virtue of its contract with the Canadian River Gas Company to receive natural gas from any of the gas leaseholds, gas rights, or gas estates described and referred to in the contract between the Canadian River Gas Company and the Amarillo Oil Company of date of

3rd day of January, 1928, unless the Seller shall first deliver to the Buyer a statement in writing under the corporate seal of the Seller that the gas leaseholds, gas rights, gas contracts or gas estates, the subject of such renunciation, by reason of Seller's own operations or explorations or the operations or explorations of others, are believed by the Seller to be without substantial value, or until the consent of the Buyer to such renunciation shall be obtained, provided, however, it is understood and agreed that Seller has renounced, surrendered and waived any right it has under and by virtue of its said contract with the Canadian River Gas Company to receive gas produced from lands described in the certain option agreement dated the 17th day of May, 1927, between the United States of America and the Amarillo Oil Company, and a certain other option agreement dated the 23rd day of March, 1928, between the United States of America and the Amarillo Oil Company, for the reason that the United States of America has exercised its rights to purchase the gas leaseholds, gas rights or gas estates described in said agreements.

* * * * * *

Tenth. This contract shall continue for twenty (20) years from the date the Buyer first receives deliveries of natural gas hereunder (and the Buyer agrees to prepare and equip itself to receive such deliveries as soon as reasonably may be) subject to termination at an earlier date either:

(a) at the option of the Seller if and upon the expiration or termination within said twenty (20) year period of Seller's gas purchase contract with the Canadian River Gas Company of date the 3rd day of January, 1928, referred to above in paragraph Eighth;

or

(b) if and upon the Seller ceasing within said twenty (20) year period to operate its pipe line extending from near Pueblo, Colorado, to Denver, Colorado.

* * * * *

Sixteenth. The Buyer agrees, in the event of temporary shortage of natural gas available in the pipe line of Seller due to causes beyond the control of the Seller and upon

request of the Seller, to deliver to Seller at the connection between the pipe line of the Buyer and the pipe line of the Seller at Arapahoe measuring station such natural gas as may be required by the Seller to supply the requirements of The Public Service Company of Colorado for its domestic consumers in Denver, but only to the extent that the Buyer has natural gas then available and undisposed of by it in excess of deliveries then required of the Buyer under contracts and commitments with its customers, including distributing customers, for domestic purposes. Such deliveries shall continue only during the period of the emergency. Measurement of said natural gas so delivered to the Seller shall be made at the Arapahoe measuring station under the terms and conditions of measurement set forth in Article Second hereof, and the Seller shall pay the Buyer for such gas the price per thousand cubic feet currently payable to the Seller by the Public Service Company of Colorado for domestic purposes.

Seventeenth. The Seller agrees to maintain at its Arapahoe station a pressure of natural gas in its pipe line of not less than fifty (50) pounds gauge to the square inch whenever and as long as it has available, sufficient natural gas to meet the current requirements of the Buyer and to install and operate the requisite compression facilities and to operate its pipe line and use the storage capacity thereof in accordance with good pipe line practice in order to maintain such pressure and to meet the varying demands of the Buyer's market hereunder.

EXHIBIT 105
STATEMENT NO. 1 (1)

COLORADO WYOMING GAS COMPANY

BALANCE SHEET - SEPTEMBER 30, 1940

ASSETS AND OTHER DEBITS

Utility Plant	
Gas Plant in Process of Reclassification	$ 1,860,568.69
1940 Additions to Gas Plant	33,852.85
Total Utility Plant	$ 1,894,421.54
Investment and Fund Accounts	
Investments in Associated Companies	100,335.29
Total Investment and Fund Accounts	$ 1,994,756.83
Current and Accrued Assets	
Cash	$ 69,793.61
Accounts Receivable	25,998.99
Receivables from Associated Companies	28,509.58
Materials and Supplies	8,194.25
Other Current and Accrued Assets	2,454.22
Total Current and Accrued Assets	$ 134,950.65
Total Assets and Other Debits	$ 2,129,707.48

EXHIBIT 105
STATEMENT NO. 1 (2)

COLORADO-WYOMING GAS COMPANY

BALANCE SHEET - SEPTEMBER 30, 1940

LIABILITIES AND OTHER CREDITS

Capital Stock		$1,501,000.00
Current and Accrued Liabilities		
Accounts Payable	$ 44,653.86	
Other Current and Accrued Liabilities	51,095.86	
Total Current and Accrued Liabilities	$ 95,749.72	
Deferred Credits		
Customers Advances for Construction	$ 2,982.14	
Reserves		
Reserve for Depreciation of Gas Plant	$ 504,482.22	
Other Reserves	150.01	
Total Reserves	$ 504,632.23	
Contributions in Aid of Construction	$ 9,1 1.83	
Earned Surplus	$ 16,149.56	
Total Liabilities and Other Credits		$2,129,707.48

EXHIBIT 105
STATEMENT NO. 2 (1)

COLORADO WYOMING GAS COMPANY

EARNING STATEMENT - 12 MONTHS ENDING SEPTEMBER 30, 1940

GROSS EARNINGS FROM OPERATION	
GAS SALES	
Industrial Sales	$ 192,660.82
Sales to Affiliated Companies (For Resale)	546,807.88
Sales to Others	78,151.86
Total Gas Sales	$ 817,620.56
OTHER OPERATING REVENUE	
Affiliated Companies	$ 8,000.00
Others	2.00
Total Other Operating Revenue	$ 8,002.00
Total Gross Revenue	$ 825,622.56
Less Bad Debts	444.26
Total Gross Earnings from Operation	$ 825,178.30
OPERATION AND MAINTENANCE	
Purchased Gas Expense	
Colorado Interstate Gas Co.	$ 515,246.17
Others	5,086.84
Total Purchase Gas Expense	$ 520,333.01
Conditioning Expense	
Transmission Operation	$ 35,380.96
Transmission Maintenance	9,097.34
Total Conditioning Expense	$ 44,478.30

COLORADO-WYOMING GAS COMPANY

EARNING STATEMENT - 12 MONTHS ENDING SEPTEMBER 30, 1940

OPERATION AND MAINTENANCE (Continued)

General Expences		
Executive Salaries	$	4,205.00
Clerical Salaries		6,035.00
Legal Expenses		5,357.90
Traveling Exponses		992.35
General Incidental Expense		4,892.69
Advisers Service Expense		3,216.19
Insurance		350.14
Rent		2,017.50
Injuries and Damages		1,227.12
Taxes - General		33,439.37
Welfare Expense		12.18
Regulatory Commission Expense		10,816.89
Total General Expenses	$	72,562.33
Gas Used by Company - Credit		3,660.99
Total Operation and Maintenance	$	633,712.65
Net Earnings from Operation	$	191,465.65
Federal Income Tax		25,388.13
Net to Reserves and Return	$	166,077.52

EXHIBIT 105
STATEMENT NO. 3

COLORADO WYOMING GAS COMPANY

M. C. F. GAS SALES - CONTRACT PRESSURE BASE

	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939
SALES TO DISTRIBUTION CO'S. FOR RESALE											
Cheyenne Lt., P & P. Co.	382,283	450,117	461,412	468,083	385,091	331,151	401,957	437,449	477,174	465,894	494,058
Public Service Co. of Colo.											
Fort Collins District	496,197	477,905	437,417	399,141	323,922	281,093	356,141	404,881	447,090	440,384	445,744
Berthoud District		12,204	35,475	46,850	44,082	40,875	*				
Boulder District	21,490	97,891	107,448	117,108	103,899	100,428	136,206	165,701	197,004	207,546	221,951
Brighton & Fort Lupton			3,614	10,562	12,094	15,116	20,730	26,365	32,839	34,909	38,227
Denver Fringe District	832	29,193	153,543	207,523	203,563	213,380	241,353	265,961	300,458	312,414	330,250
Greeley Gas and Fuel Co.		24,557	114,952	131,635	91,645	84,803	114,091	140,826	150,513	158,476	170,847
Highway Gas Co.					2,180	5,450	5,541	5,240	9,446	8,619	5,334
Total Sales for Resale	900,802	1091,867	1313,861	1365,902	1166,476	1072,296	1276,059	1446,423	1614,524	1628,242	1706,411
SALES TO PUBLIC AUTHORITIES											
Fort Logan		815	2,128	2,811	4,217	4,885	6,537	7,099	7,811	8,770	8,776
Fort Warren		1,923	8,597	13,809	16,610	17,449	19,358	17,947	17,249	18,821	18,527
Denver Board of Water Comm.								3,109	10,298	9,991	9,010
Total Sales to Public Authorities		2,738	10,725	16,620	20,827	22,334	25,895	28,155	35,358	37,582	36,313
MISCELLANEOUS MAIN LINE SALES	9,449	23,614	11,858	8,881	6,984	5,233	20,541	8,645	7,622	11,633	4,804
INDUSTRIAL SALES											
Thomas Bate & Sons											81
Valmont Generating Plant											31,056
Amerada Petroleum Co.								61,808	41,239		
Ft. Collins Producing Corp.								51,830	7,438	3,024	4,575
Golden Fire Brick Co.		34,584	90,805	27,697	16,891	26,761	49,741	73,269	77,880	72,185	66,921
Great Western Sugar Co.	10,952	364,080	416,557	488,421	478,895	431,985	320,067	225,389	323,636	287,051	356,606
Colo. Portland Cement Co.	696,891	658,590	503,548	499,544	577	558,607	659,475	916,017	961,897	706,144	1015,502
Kuner-Empson Co.						4,147	28,027	32,185	33,127	34,732	38,570
Denver Pressed Brick Co.									10,221	62,904	52,597
Adolph Coors Co.								2,724	10,489	9,931	18,677
Producer's Canning Co.	1,166	961	519	460	490	660	980	23	750	1,037	333
Total Industrial Sales	708,989	1,058,215	1,011,429	1,016,122	496,853	1022,160	1058,290	1363,245	1466,677	1177,008	1584,418
TOTAL ALL SALES - M. C. F.	1619,240	2,176,434	2,347,873	2,407,525	1691,140	2122,023	2380,785	2846,468	3124,181	2854,465	3332,446

*NOTE: During the year 1935 the Berthoud District was divided between the Boulder and Fort Collins District.

EXHIBIT 105
STATEMENT NO. 4

COLORADO-WYOMING GAS COMPANY
GROSS REVENUE FROM SALES

	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939
SALES TO DISTRIBUTION CO'S. FOR RESALE											
Cheyenne Lt., P. and P. Co.	$ 129,125	$ 157,502	$ 179,177	$ 177,784	$ 153,644	$ 131,261	$ 154,758	$ 168,597	$ 184,388	$ 180,944	$ 192,324
(Rebate on Heating Gas)						(R) 1,666	(R) 4,620	(R) 8,117	(R) 9,119	(R) 9,189	(R)10,172
Public Service Co. of Colorado											
Fort Collins District	132,558	140,785	150,081	140,891	118,017	102,779	130,252	146,362	163,854	162,677	165,318
Berthoud District		4,864	14,065	18,169	17,004	15,817	*				
Boulder District	8,596	39,131	42,731	46,404	41,053	39,777	53,965	64,968	76,287	81,997	87,789
Brighton and Fort Lupton			1,422	4,192	4,817	6,037	8,272	10,415	12,502	13,898	15,191
Denver Fringe District	333	7,620	34,962	49,180	48,353	48,659	53,733	64,590	74,777	78,352	83,109
(Rebate on Heating Gas)						(R) 968	(R) 7,417	(R) 6,039	(R) 9,519	(R)16,866	(R) 18,339
Greeley Gas and Fuel Company		9,733	44,376	49,364	35,561	33,004	44,440	53,193	57,911	61,230	66,505
(Rebate on Heating Gas)						(R) 283	(R) 1,937	(R) 2,149	(R) 2,496	(R) 2,625	(R) 2,840
Highway Gas Company					283	708	720	681	1,216	1,120	693
Total Sales for Resale	270,612	359,635	470,814	485,984	418,738	375,125	432,166	492,501	549,801	551,538	579,578
SALES TO PUBLIC AUTHORITIES											
Fort Logan		326	851	1,124	1,687	1,954	2,615	2,840	3,124	3,508	3,510
Fort Warren		808	3,611	5,648	6,644	6,980	7,743	7,179	6,899	7,528	7,411
Board of Water Commissioners, Denver								670	2,140	2,071	1,895
Total Sales to Public Authorities		1,134	4,462	6,772	8,331	8,934	10,358	10,689	12,163	13,107	12,816
MISCELLANEOUS MAIN LINE SALES	3,319	6,764	4,735	4,050	3,207	2,511	4,981	3,343	3,330	4,337	2,054
INDUSTRIAL SALES											
Thomas Bate & Sons											39
Valmont Generating Plant											3,404
Amerada Petroleum Company								12,362	8,248		
Ft. Collins Producing Corp.								8,911	1,293	529	801
Golden Fire Brick Company		6,188	16,282	5,645	3,427	4,882	8,630	12,231	12,474	11,620	10,821
Great Western Sugar Co.	2,790	86,644	87,641	92,716	91,001	82,557	60,915	43,298	61,855	54,936	68,244
Colorado Portland Cement Co.	116,943	111,092	71,293	60,645	201	67,033	79,137	109,922	115,428	84,737	121,860
Kuner-Empson						964	6,532	7,349	6,910	7,365	7,982
Denver Pressed Brick Co.									2,080	11,563	9,707
Adolph Coors Company								590	2,304	2,089	3,508
Producers Canning Company	343	252	155	145	153	158	233	22	179	251	125
Total Industrial Sales	120,076	204,176	175,371	159,151	94,782	155,594	155,447	194,685	210,771	173,090	226,491
TOTAL ALL SALES	$394,007	$571,709	$655,382	$655,957	$525,058	$542,164	$602,952	$701,218	$776,065	$742,072	$820,939

*NOTE: During the year 1935 the Berthoud District was divided between the Boulder and Fort Collins Districts.

EXHIBIT 111
EXPLANATORY STATEMENT (CONT

WILLARD

EXPLANATORY STATEMENT

This exhibit sets forth, for the purposes of this case, the value of the property of the Colorado Wyoming Gas Company. It indicates such value as disclosed by actual construction costs, less observed depreciation plus working capital and additions to plant, now and immediately in course of construction.

The accounts shown are in accordance with the classification used by the Company prior to January 1, 1940, at which time the Uniform System of Accounts as prescribed by the Federal Power Commission was adopted. Reclassification of the recorded costs to conform with the new system of accounts has not yet been accomplished.

Statement No. 1 reflects in summary, the construction costs less observed depreciation and includes additions to plant in the course of construction together with working capital.

Statement No. 2 shows the actual construction costs by accounts and indicates the existing depreciation, applicable to each group as a whole.

Statement No. 3 reflects the detail of the physical property by accounts together with the depreciation as applied thereto.

Statement No. 4 details the development of the plant and investment account from 1925 to September 30, 1940.

There are no amounts included in any of said statements except as reflected on the books of the Company, other than the additions mentioned above.

COLORADO-WYOMING GAS COMPANY

PRESENT VALUE

EXHIBIT 111

STATEMENT NO. 1

Plant and Investment (Sept. 30, 1940)	$ 1,747,865
Arapahoe Station:	
Commitments, 1940	9,688
Additional Compressor, 1941	35,000
Working Capital	45,490
Total	$ 1,838,043

COLORADO-WYOMING GAS COMPANY

SEPTEMBER 30, 1940

EXHIBIT 111

STATEMENT NO. 2

		Plant and Investment	P & I Less Depreciation
SUMMARY			
1000.	Lands in Fee	$ 6469.51	$ 6469.51
1003.	Buildings and Grounds	1332.62	1332.62
1004.	Measuring Stations	51383.40	48300.40
1005.	Regulators	1292.71	1137.58
1006.	Meters	6492.60	5713.49
1008.	Office Equipment	3415.25	2902.96
1009.	Automobiles and Trucks	5053.31	2941.06
1011.	Tools	1295.55	647.78
1013.	Main Lines	1489252.13	1376938.75
1014.	Compressor Stations	232405.81	212630.13
1016.	Main Line Services	438.50	385.88
1018.	Telephone Lines	498.74	473.80
1019.	Organization	3472.28	3472.28
1021.	General Construction Expenditures	91619.13	84518.65
	Total	$1,894,421.54	$1,747,864.89

COLORADO-WYOMING GAS COMPANY

SEPTEMBER 30, 1940

EXHIBIT 111

STATEMENT NO. 3 (1)

	Plant and Investment	Depreciation Deducted	P & I Less Depreciation
1000. Lands in Fee			
Compressor Stations:			
Arapahoe	$ 400.00	-	$ 400.00
Arvada	2256.50	-	2256.50
Sullivan	807.21	-	807.21
Wellington	526.00	-	526.00
Measuring Stations:			
Arvada	224.55	-	224.55
Boulder	500.00	-	500.00
Brighton	141.00	-	141.00
Colfax Avenue	331.50	-	331.50
Greeley	85.00	-	85.00
Johnstown	225.00	-	225.00
Longmont	128.50	-	128.50
Loveland	413.50	-	413.50
West 32nd Avenue	242.25	-	242.25
Wheatridge	188.50	-	188.50
Total	$ 6469.51	-	$ 6469.51
1003. Buildings and Grounds			
Arapahoe Station:			
This account includes Material and Labor costs applicable to Buildings and improvements	$ 1332.62	-	$ 1332.62
Total	$ 1332.62	-	$ 1332.62
1004. Measuring Stations			
General:			
This account includes Material and Labor costs necessary for the installation of Pipe, Fittings, Valves, Orifice and Positive Meters, Regulators, Gages, Heaters, Structures, Fences and Miscellaneous Improvements at various points of Measurement	$ 51383.40	$ 3083.00	$ 48300.40
Total	$ 51383.40	$ 3083.00	$ 48300.40

COLORADO-WYOMING GAS COMPANY

SEPTEMBER 30, 1940 EXHIBIT 111

STATEMENT NO. 3 (2)

	Plant and Investment	Depreciation Deducted	P & I Less Depreciation
1005. Regulators			
General: This account includes Regulators and incidental items located at points other than those assignable to measuring stations	$ 1292.71	$ 155.13	$ 1137.58
Total	$ 1292.71	$ 155.13	$ 1137.58
1006. Meters			
General: This account includes all Positive Meters in service and in Reserve together with incidental items located at points other than those assignable to measuring stations	$ 6492.60	$ 779.11	$ 5713.49
Total	$ 6492.60	$ 779.11	$ 5713.49
1008. Office Equipment			
Main Office: This account includes Furniture and Equipment, such as Desks Tables, Chairs, Filing Cabinets, Typewriters, Calculators, etc.	$ 3415.25	$ 512.29	$ 2902.96
Total	$ 3415.25	$ 512.29	$ 2902.96
1009. Automobiles			
General: This account includes three Automobiles and three Trucks	$ 5053.31	$ 2112.25	$ 2941.06
Total	$ 5053.31	$ 2112.25	$ 2941.06

COLORADO-WYOMING GAS COMPANY

SEPTEMBER 30, 1940

EXHIBIT 111

STATEMENT NO. 3 (3)

	Plant and Investment	Depreciation Deducted	P & I Less Depreciation
1011. Tools			
General:			
This account includes portable tools such as Chain Hoists, Jacks, Welding Equipment, Tapping Machines, Pipe Threaders and Special Tools	$ 1295.55	$ 647.77	$ 647.78
Total	$ 1295.55	$ 647.77	$ 647.78
1013. Main Lines			
Main Lines:			
Littleton to Boulder Junction:			
Steel Pipe, Seamless, Plain End:			
10-3/4" - 28.03# - 386 Feet			
10-3/4" - 34.24# - 147667 Feet			
10-3/4" - 43.68# - 8037 Feet			
10-3/4" - 54.73# - 956 Feet			
Miscellaneous - 12848 Feet			
Easements etc.	$ 10004.85	$ -	$ 10004.85
Pipe, Valves, Fittings etc.	374977.71	19728.18	355249.53
Boulder Junction to Ft. Collins:			
Steel Pipe, Seamless, Plain End:			
8-1/4" - 31.69# - 307 Feet			
8-5/8" - 25.06# - 215413 Feet			
8-5/8" - 33.04# - 9580 Feet			
Easements, etc,	9335.01	-	9335.01
Pipe, Valves, Fittings, etc.	379930.86	35299.42	344631.44
Ft. Collins to Cheyenne:			
Steel Pipe, Lap-weld, Plain End:			
6-5/8" - 18.97# - 216138 Feet			
Easements, etc.	7502.37	-	7502.37
Pipe, Valves, Fittings, etc.	290103.68	23043.47	267060.21
Branch Lines:			
Boulder Line:			
Steel Pipe, Seamless, Plain End:			
8-5/8" - 25.06# - 21465 Feet			
Pipe, Valves, Fittings, etc.	40427.84	2185.38	38242.46
Steel Pipe, Electric Weld, Plain End:			
6-5/8" - 17.02# - 17665 Feet			
Easements, etc.	1113.10	-	1113.10
Pipe, Valves Fittings etc	24826.54	281.48	24545.06

COLORADO-WYOMING GAS COMPANY

SEPTEMBER 30, 1940 EXHIBIT 111

STATEMENT NO. 3 (4)

1013. Main Lines	Plant and Investment	Depreciation Deducted	P & I Less Depreciation
Branch Lines: (Cont'd)			
Brighton Line:			
Steel Pipe, Lap-weld, Plain End:			
3" 8.80# 21279 Feet			
Easements, etc.	$ 21.66	$ -	$ 21.66
Pipe, Valves, Fittings etc.	12090.36	1605.90	10484.46
2-7/8" - 5.79# 34890 Feet			
2-1/2" - 6.16# 53436 Feet			
Easements, etc.	671.36	-	671.36
Pipe, Valves, Fittings etc.	44021.39	1200.61	42820.78
Colorado Portland Cement Line:			
Steel Pipe, Lap-weld, Plain End:			
6-5/8" - 18.97# 19434 Feet			
Easements, etc.	523.18	-	523.18
Pipe, Valves, Fittings etc.	26489.55	11184.57	15304.98
Fort Lupton Line:			
Steel Pipe Lap-weld, Plain End:			
2-1/2" - 6.16# 103 Feet			
2-3/8" - 3.65# 11969 Feet			
Pipe, Valves, Fittings etc.	5524.93	77.15	5447.78
Golden Line:			
Steel Pipe, Seamless, Plain End:			
4-1/2" - 10.79# 46213 Feet			
Easements, etc.	16.04	-	16.04
Pipe, Valves, Fittings etc.	45194.60	1297.43	43897.17
Greeley Line:			
Steel Pipe, Electric Weld, Plain End:			
6-5/8" - 17.02# 119263 Feet			
Easements, etc.	1382.27	-	1382.27
Pipe, Valves, Fittings etc.	150500.22	9507.94	140992.28
Johnstown Line:			
Steel Pipe Electric Weld, Plain End:			
4-1/2" - 10.79# 345 Feet			
6-5/8" - 17.02# 18667 Feet			
Miscellaneous 485 Feet			
Pipe, Valves, Fittings etc.	23802.13	4422.55	19379.58
Valmont Line:			
Steel Pipe, Electric Weld, Plain End:			
8-5/8" - 22.36# 6210 Feet			
Steel Pipe, Lap-Weld- Plain End:			
8-5/8" - 24.69# 65 Feet			
Easements, etc.	378.74	-	378.74
Pipe, Valves, Fittings etc.	11629.86	298.08	11331.78

COLORADO-WYOMING GAS COMPANY

SEPTEMBER 30, 1940 — EXHIBIT 111

STATEMENT NO. 3 (5)

	Plant and Investment	Depreciation Deducted	P & I Less Depreciation
13. Main Lines			
Miscellaneous Lines:			
1" - 936 Feet			
1-1/2" - 2175 Feet			
2" - 14160 Feet			
2-1/2" - 5865 Feet			
3" - 2991 Feet			
3-1/2" - 12353 Feet			
4" - 6534 Feet			
Easements, etc.	$ 109.72	$ -	$ 109.72
Pipe, Valves, Fittings, etc.	28674.16	2181.22	26492.94
Total	$1489252.13	$ 112313.38	$ 1376938.75
14. Compressor Stations			
Arapahoe Station:			
General:			
600 H P - Cooper, Gas Engine and Compressors, with Foundations and Accessories	$ 30678.70	$ -	$ 30678.70
Total Arapahoe Station	$ 30678.70	$ -	$ 30678.70
Arvada Station:			
Buildings and Foundations:			
Auxiliary Building:			
32'0"x48'0"x14'0" Foundations and Floors, Concrete; Superstructure, Truscon Steel			
Compressor Building:			
32'0"x96'0"x14'0" Foundation and Floors, Concrete; Superstructure, Truscon Steel			
Meter House:			
12'0"x20'0"x9'0" Foundation and Floors, Concrete; Superstructure Truscon Steel			
Office and Warehouse:			
32'0"x48'0"x14'0" Foundation and Floors, Concrete; Superstructure, Truscon Steel			

COLORADO-WYOMING GAS COMPANY

SEPTEMBER 30, 1940 — EXHIBIT 111

STATEMENT NO. 3 (6)

	Plant and Investment	Depreciation Deducted	P & I Less Depreciation
1014. Compressor Stations			
Arvada Station:			
Buildings and Foundations:			
Valve House:			
12'0"x10'0"x16'3" Foundation and Floors, Concrete; Superstructure, Truscon Steel			
Miscellaneous:			
Other Structural Improvements and Equipment Foundations	$ 28667.70	$ 2006.74	$ 26660.96
Air Compressors:			
4-1/2"x1-7/8"x4" - Gardner Denver with 5 H.P. Motor (2)	1507.00	75.35	1431.65
Gas Compressors:			
7"x20" - Cooper, Duplex with 170 H.P., Gas Engine (6)	68079.34	5446.35	62632.99
Gas Cooler:			
18'0"x22'0"x7'0" - Fluor, Tower, with 4 -Grisoom-Russell Bentube Sections (1)	4430.00	443.00	3987.00
Gas Scrubber:			
6'0" Diameter x 8'0" - Wyatt (1)	1215.32	97.23	1118.09
Generator:			
45 Kv-a - General Electric with 1-1/2 KW, Exciter and 50 H.P., Gas Engine (1)	5040.61	302.44	4738.17
Oil Tanks:			
2'6" Diameter x 5'6", Steel (2)			
5'0" Diameter x 14'0", Steel (2)	298.92	29.89	269.03
Switchboards:			
2"x24"x65" - Slate Panels Complete with Instruments (3)	818.74	32.75	785.99
Water Cooler:			
18'0"x30'0"x25'0"-Fluor, Tower (1)	2490.00	249.00	2241.00

COLORADO-WYOMING GAS COMPANY

SEPTEMBER 30, 1940 EXHIBIT 111

STATEMENT NO. 3 (7)

	Plant and Investment	Depreciation Deducted	P & I Less Depreciation
314. Compressor Stations			
Arvada Station:			
Water Pumps:			
Size 3 - Goulds, Centrifugal, with 15 HP, Motor (1)			
3" - Worthington, Centrifugal with 10 HP, Motor (2)	$ 1299.74	$ 129.97	$ 1169.77
Water Softener:			
Size D-36-36-S-Crane-Warlo (1)	1462.25	219.34	1242.91
Station Piping:			
Pipe, Valves, Fittings etc.	13623.80	1771.09	11852.71
Miscellaneous:			
Gages, Thermometers, Hand Pumps, Filters, etc.	5040.37	604.84	4435.53
Total Arvada Station	$133973.79	$ 11407.99	$ 122565.80
Wellington Station:			
Buildings and Foundations:			
Compressor Building:			
32'0"x70'0"x13'0"			
Foundation and Floors, Concrete; Superstructure, Truscon Steel			
Dwelling:			
26'3"x32'3"x11'3"			
6'3"x20'6"x 9'0"			
7'0"x26'3"x 9'6"			
Foundation, Concrete; Walls Lap Siding; Roof, Composition Shingles; Floors, Wood.			
Garage and Storehouse:			
16'3"x32'3"x8'9"			
Foundation and Walls Wood; Roof Corrugated Steel			
Office and Warehouse:			
24'0"x26'3"x11'3"			
Foundation, Concrete; Walls and Floor, Wood; Roof, Composition Shingles			
Valve House:			
9'0"x17'0"x9'9"			
Foundation, Concrete; Walls and Roof, Corrugated Steel; Floor, Concrete			

COLORADO-WYOMING GAS COMPANY

SEPTEMBER 30, 1940

EXHIBIT 111

STATEMENT NO. 3 (8)

	Plant and Investment	Depreciation Deducted	P & I Less Depreciation
1014. Compressor Stations			
Wellington Station:			
Buildings and Foundations:			
Water Softener Building:			
16'0"x24'0"x9'3"			
Walls and Roof, Corrugated Steel; Floor, Concrete			
Miscellaneous:			
Other Structural Improvements and Equipment Foundations	$ 21084.62	$ 2108.46	$ 18976.16
Air Compressors:			
3-1/2"x4" -Ingersoll Rand (2)	503.29	100.66	402.63
Gas Compressors:			
10"x20" - Cooper with 85 HP Gas Engine (4)	25167.77	2516.78	22650.99
Gas Cooler:			
Griscom-Russell Bentube Sections	1496.57	224.49	1272.08
Gas Engines:			
20 HP - Superior (2)	2037.99	407.60	1630.39
Generator:			
6 KW - General Electric (1)	269.64	40.45	229.19
Oil Tank:			
6'9" Diameter x 8'0" - Steel (1)	114.14	17.12	97.02
Scrubber:			
7'0" Diameter x 10'6" Stearns- Rogers (1)	1482.51	222.38	1260.13
Water Pumps:			
Size 3 - Goulds, Centrifugal (2)			
4-1/2"x3-3/4"x4" - Gardner Denver (1)			
8"x8"x12" - Fairbanks-Morse (1)	1077.18	161.58	915.60
Water Softener:			
Paige and Jones, Complete Unit (1)	1358.61	203.79	1154.82
Station Piping:			
Pipe, Valves, Fittings, etc.	5574.69	1226.43	4348.26
Miscellaneous:			
Gages, Thermometers, Hand Pumps, Filters, etc.	7586.31	1137.95	6448.36
Total Wellington Station	$ 67753.32	$ 8367.69	$ 59385.63
TOTAL	$ 232405.81	$ 19775.68	$ 212630.13

COLORADO-WYOMING GAS COMPANY.

SEPTEMBER 30, 1940 EXHIBIT 111

STATEMENT NO. 3 (9)

	Plant and Investment	Depreciation Deducted	P & I Less Depreciation
1016. Main Line Connections			
General: This account includes Material and Labor in connection with Pipe and Fittings from tap gate off main line to meter setting serving small main line customers	$ 438.50	$ 52.62	$ 385.88
Total	$ 438.50	$ 52.62	$ 385.88
1018. Telephone Lines			
General: This account includes Material and Labor costs for Wire, Pins, Insulators, Receiving Sets, Siren and Miscellaneous Items in connection with 6-1/2 miles of overhead line extending from Wellington Station to the town of Wellington	$ 498.74	$ 24.94	$ 473.80
Total	$ 498.74	$ 24.94	$ 473.80
1019. Organization			
This account includes Legal Fees, Filing Fees and Director's Fees in connection with Organization and Incorporation. Obtaining certificates of Convenience and Necessity and Qualifying in all necessary counties, together with Documentary Stamp Tax and original Capital Stock Tax	$ 3472.28	$ -	$ 3472.28
Total	$ 3472.28	$ -	$ 3472.28
1021. General Construction Expenditures			
This account includes undistributed expenditures in connection with construction	$ 91619.13	$ 7100.48	$ 84518.65
Total	$ 91619.13	$ 7100.48	$ 84518.65

EXHIBIT 111

STATEMENT NO. 4

COLORADO WYOMING GAS COMPANY

PLANT AND INVESTMENT

	Dec. 31, 1925	Dec. 31, 1926	Dec. 31, 1927	Dec. 31, 1928	Dec. 31, 1929	Dec. 31, 1930	Dec. 31, 1931	Dec. 31, 1932	Dec. 31, 1933	Dec. 31, 1934	Dec. 31, 1935	Dec. 31, 1936	Dec. 31, 1937	Dec. 31, 1938	Dec. 31, 1939	Sept. 30, 1940
1000. Lands in Fee	$	$ 335.00	$ 440.00	$ 440.00	$ 3,097.55	$ 4,123.55	$ 4,393.55	$ 4,393.55	$ 4,393.55	$ 4,393.55	$ 4,793.55	$ 4,948.55	$ 4,843.55	$ 5,262.30	$ 5,262.30	$ 6,469.81
1001. Buildings and Grounds																1,332.62
1004. Measuring Stations		7,162.49	9,214.98	9,405.03	22,699.10	40,721.97	44,038.22	44,038.22	43,744.11	44,269.84	45,555.49	50,408.88	52,384.82	51,281.06	51,366.64	51,383.40
1005. Regulators		1,193.00	1,193.00	1,193.00	1,193.00	1,193.00	1,193.00	1,193.00	1,193.00	1,193.00	1,193.00	1,193.00	1,253.94	1,255.94	1,292.71	1,292.71
1006. Meters		880.00	880.00	1,058.12	3,245.35	6,119.72	6,342.75	5,880.75	5,865.75	5,865.75	5,865.75	5,920.96	6,920.96	6,370.96	6,492.60	6,492.60
1008. Office Equipment		504.99	553.10	553.10	2,303.27	3,269.53	3,269.53	3,269.53	3,269.53	3,269.53	3,269.53	3,269.53	3,269.53	3,304.84	3,415.25	3,415.25
1009. Automobiles		3,592.84	3,518.34	3,518.34	6,142.86	6,726.24	6,726.24	6,047.26	5,760.46	4,469.72	4,469.72	4,469.72	4,668.61	4,668.61	4,668.61	5,083.81
1011. Tools		856.53	1,153.34	1,153.34	1,179.97	1,179.97	1,179.97	1,179.97	1,179.97	1,179.97	1,264.97	1,264.97	1,264.97	1,264.97	1,264.97	1,295.56
1013. Main Lines	75,631.10	283,846.23	324,307.70	324,402.47	1192,068.94	1405,015.93	1470,987.17	1469,754.68	1469,754.68	1470,678.76	1482,272.55	1484,743.06	1487,530.78	1489,033.09	1489,033.09	1489,282.13
1014. Compressor Stations		41,068.83	134,655.54	146,582.83	150,582.11	219,805.30	201,999.33	201,289.32	201,289.32	201,289.32	201,289.32	200,769.48	201,120.06	201,120.06	201,727.11	232,405.61
1016. Main Line Services		94.32	116.90	179.51	179.51	179.51	256.83	256.83	256.83	319.00	341.04	341.04	392.79	415.81	438.80	438.80
1018. Telephone Lines				319.20	498.74	498.74	498.74	498.74	498.74	498.74	498.74	498.74	498.74	498.74	498.74	498.74
1019. Organization	107.89	2,722.28	2,722.28	2,722.28	2,722.28	2,722.28	2,722.28	3,472.28	3,472.28	3,472.28	3,472.28	3,472.28	3,472.28	3,472.28	3,472.28	3,472.28
1021. General Construction Exp.	486.31	22,861.70	6,462.67	6,462.67	6,462.67	44,974.39	77,563.59	91,619.13	91,619.13	91,619.13	91,619.13	91,619.13	91,619.13	91,619.13	91,619.13	91,619.13
Total	$ 76,225.30	364,916.21	485,217.83	497,989.89	1392,376.36	1738,530.13	1821,171.20	1832,893.26	1832,297.35	1832,518.59	1845,885.07	1852,919.34	1858,540.15	1859,565.76	1860,551.93	1894,421.84

EXHIBIT 115
EXPLANATORY STATEMENT

HANCOCK

EXPLANATORY STATEMENT

OF

H. D. HANCOCK

The operations of the company projected in Exhibit No.____ to the year 1949, beginning with actual data in 1939 and the first ten months of 1940, shows classified sales in M.c.f., gross earnings to be realized therefrom, operation and maintenance expenses, and taxes, including Federal income tax, and the amount available for reserves and return.

The figures as projected have been arrived at after careful consideration of all relevant elements.

The volume of sales for each year for each customer has been based on an analysis and appraisal of present and expected markets and trends, including consultation with the customers of the company as to their anticipated requirements.

Emergency conditions and economic depressions or booms, being entirely speculative, have not been considered, and the entire projection has been based on the present contract purchase prices of gas by the company, and the various sales prices thereof which are now charged to its customers.

Expenses, including operating cost, maintenance cost, and general taxes, have been predicated upon the company's actual experience in the past and upon consideration of the effect of anticipated changes in the future. Federal income taxes have been computed at the present applicable rates and do not reflect any amount for probable, and almost certain early, additions to the total of such Federal income taxes resulting from increase in the tax rate or the application of additional forms of taxes.

The resulting earnings available for reserves and return in

this exhibit reflect the extent of the earnings which it is believed the company can reasonably expect to receive from year to year during the period covered by the study.

No annual amortization or retirement reserve expense can be determined, due particularly to the entire absence of factual data with respect to the expected life of the gas reserves from which the company derives its supply of natural gas by purchase from the Colorado-Interstate Gas Company (except as to an inconsequential amount purchased elsewhere).

EXHIBIT NO. 115

STATEMENT NO. 1

COLORADO WYOMING GAS COMPANY

RANKING STATEMENT - ESTIMATED FUTURE

	Actual 1939	10 Mos. Actual 2 Mos. Estimated 1940	1941	1942	1943	1944	1945	1946	1947	1948	1949
GAS SALES - M. C. F.											
Sales for Resale	1706323	1838965	1907000	1970800	2027600	2088500	2141400	2190300	2235800	2274100	2312700
Sales to Public Authorities	36313	37371	41600	42500	42500	42500	42500	42500	42500	42500	42500
Sales - Industrial and Main Line	1589810	1311690	1410600	1408000	1407000	1407000	1406000	1403000	1403000	1403000	1403000
Total Gas Sales	3332446	3188026	3359200	3421300	3477100	3538000	3589900	3635800	3681300	3719600	3758200
GROSS EARNINGS FROM OPERATION											
Sales for Resale	$ 579578	$ 629770	$ 655116	$ 679622	$ 700342	$ 721972	$ 740866	$ 759032	$ 776582	$ 789682	$ 803872
Sales to Public Authorities	12816	13174	14815	15175	15175	15175	15175	15175	15175	15175	15175
Sales - Industrial and Main Line	236544	193618	205124	204593	204618	204618	204243	203718	203718	203718	203718
Total Gross Revenue	$ 828938	$ 836562	$ 875055	$ 899390	$ 919935	$ 941565	$ 960284	$ 977925	$ 995475	$ 1008775	$ 1022765
Less Bad Debts, etc.	441	-	-	-	-	-	-	-	-	-	-
Total Gross Earnings from Operation	$ 828497	$ 836562	$ 875055	$ 899390	$ 919935	$ 941565	$ 960284	$ 977925	$ 995475	$ 1008775	$ 1022765
OPERATION AND MAINTENANCE											
Purchased Gas Expense	$ 503506	$ 530190	$ 557158	$ 572685	$ 585989	$ 611448	$ 650774	$ 666512	$ 677612	$ 687312	$ 696387
Transmission Operation	35166	35760	43770	47770	50490	54170	55170	56170	57145	57645	58145
Transmission Maintenance	5060	10300	16000	19950	22250	24450	25650	26250	26600	26800	27000
General Expenses:											
Taxes - General	32157	34900	36560	38210	39860	41510	43160	44810	46460	48110	49760
Other	42987	44950	49085	39235	40045	40145	40245	40345	40495	40595	40695
Total Expenses	$ 618876	$ 656100	$ 702573	$ 717850	$ 738634	$ 771723	$ 814999	$ 834087	$ 848312	$ 860462	$ 871987
Gas Used by Company - Credit	4336	3500	4000	4500	4750	4900	5000	5100	5200	5300	5400
Total Operation and Maintenance	$ 614540	$ 652600	$ 698573	$ 713350	$ 733884	$ 766823	$ 809999	$ 828987	$ 843112	$ 855162	$ 866587
NET EARNINGS FROM OPERATION	$ 213957	$ 183962	$ 176482	$ 186040	$ 186051	$ 174742	$ 150285	$ 148938	$ 152363	$ 153613	$ 156178
Federal Income Tax	23458	26711	24540	26664	26666	23952	18083	17759	18581	18881	19497
NET TO RESERVES AND RETURN	$ 190499	$ 157251	$ 151942	$ 159376	$ 159385	$ 150790	$ 132202	$ 131179	$ 133782	$ 134732	$ 136681

NOTE: The projected earnings as shown above, do not reflect beyond 1941, the effect of additional compressor station facilities and increased transmission operation and maintenance expense, which would be required to deliver the estimated future volumes of gas.

COLORADO WYOMING GAS COMPANY - EXHIBIT 115 - BREAKDOWN OF GENERAL EXPENSE

	1939	1940	1941	1942	1943	1944	1945
Executive Salaries	7318.00	7718	10800	10200	10200	10200	10800
Clerical Salaries	2617.50	3472	4860	6360	7020	7020	7020
Legal Expense	6728.15	5900	6500	6500	6500	6500	6500
General Traveling Expense	1537.98	1200	1200	1200	1200	1200	1200
General Office and Misc. Expense	4132.87	4800	4800	4800	4800	4800	4800
Advisory Service Fees and Expense	3312.58	3600	3700	3800	3900	4000	4100
Insurance	385.86	360	375	375	375	375	375
Rent	1680.00	2120	2120	2120	2120	2120	2120
Injuries and Damages	1174.05	1250	1300	1350	1400	1400	1400
Regulatory Commission Expense	14079.16	14500	14000	2500	2500	2500	2500
Welfare Expense	20.84	30	30	30	30	30	30
Total	42986.99	44950	49085	39235	40045	40145	40245

EXHIBIT 116

COLORADO WYOMING GAS COMPANY - EXHIBIT 115 - BREAKDOWN OF GENERAL EXPENSE

1939	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949
7318.00	7718	10800	10200	10200	10200	10800	10200	10200	10200	10200
2617.50	3472	4860	6360	7020	7020	7020	7020	7020	7020	7020
6728.15	5900	6500	6500	6500	6500	6500	6500	6500	6500	6500
1537.98	1200	1200	1200	1200	1200	1200	1200	1200	1200	1200
4132.87	4800	4800	4800	4800	4800	4800	4800	4800	4800	4800
3312.58	3600	3700	3800	3900	4000	4100	4200	4300	4400	4500
385.86	360	375	375	375	375	375	375	375	375	375
1680.00	2120	2120	2120	2120	2120	2120	2120	2120	2120	2120
1174.05	1250	1300	1350	1400	1400	1400	1400	1450	1450	1450
14079.16	14500	14000	2500	2500	2500	2500	2500	2500	2500	2500
20.84	30	30	30	30	30	30	30	30	30	30
42986.99	44950	49085	39235	40045	40145	40245	40345	40495	40595	40695

EXHIBIT 117

EXPLANATORY STATEMENT

HANCOCK

WRITTEN STATEMENT

BY

H. D. HANCOCK

Exhibit No. 117 shows the earnings which reasonably may be expected to accrue to the company during the period ending with the year 1945, from all "sales for resale."

The total figures shown on Exhibit No. 115 covering volume of sales in M.c.f. cost of purchased gas, revenue from sales, operation and maintenance expense, and general and Federal income taxes, have been apportioned between such "sales for resale" and all other sales. Such allocation has been projected for each year of the period ending in 1945.

The calculated total depreciated investment of the Company presently devoted to service of the "sales for resale" customers, the primary obligation and business of the company, was determined, in general, by applying the actual peak day demand of such customers to the total plant capacity of the Company. The result is the investment used for total sales for resale.

EXHIBIT 117

STATEMENT NO.1

COLORADO WYOMING GAS COMPANY

CALCULATED TOTAL INVESTMENT

APPLICABLE TO TOTAL SALES FOR RESALE

	Plant and Investment	
	Total	Depreciated
Main Lines	$ 1138178	$ 1054967
Compressing Stations	239249	219294
Branch Lines and All Other Miscellaneous Property	516995	473604
Sub Total	$ 1894422	$ 1747865
Compressing Stations Additions	44688	44688
Working Capital	45490	45490
Sub Total	$ 90178	$ 90178
Total	$ 1984600	$ 1838043
Investment Used by Industrial and Public Authority Customers	106952	90551
Investment Used For Total Sales for Resale	$ 1877648	$ 1747492

EXHIBIT 117

STATEMENT NO. 2

COLORADO-WYOMING GAS COMPANY

EARNING STATEMENT - TOTAL SALES FOR RESALE, 1939 - 1945

	1939	1940	1941	1942	1943	1944	1945
GAS SALES - M. C. F.							
Sales for Resale							
Domestic	1283316	1414000	1482200	1546000	1602800	1663700	1716600
Industrial	423007	424965	424800	424800	424800	424800	424800
Total Gas Sales	1706323	1838965	1907000	1970800	2027600	2088500	2141400
GROSS EARNINGS FROM OPERATION							
Sales for Resale							
Domestic	$ 488765	$ 538480	$ 563876	$ 588382	$ 609102	$ 630732	$ 649626
Industrial	90813	91290	91240	91240	91240	91240	91240
Total Gross Earnings from Operation	$ 579578	$ 629770	$ 655116	$ 679622	$ 700342	$ 721972	$ 740866
OPERATION AND MAINTENANCE							
Purchased Gas Expense	$ 330410	$ 385180	$ 401830	$ 417450	$ 430800	$ 455890	$ 495170
Transmission Operation	29310	30730	38320	42150	44810	48470	49840
Transmission Maintenance	3770	8930	13930	17540	19540	21520	22440
General Expenses							
Taxes - General	29488	31639	33007	34824	36406	37794	38884
Other	42987	44950	49085	39235	40045	40145	40245
Total Expenses	$ 435965	$ 501429	$ 536172	$ 551199	$ 571601	$ 603819	$ 646579
Gas Used by Company - Credit	2428	2156	2372	2705	2888	3018	3495
Total Operation and Maintenance	$ 433537	$ 499273	$ 533800	$ 548494	$ 568713	$ 600801	$ 643084
Net Earnings from Operation	$ 146041	$ 130497	$ 121316	$ 131128	$ 131629	$ 121171	$ 97782
Federal Income Tax	12912	14840	12260	14444	14565	12056	6442
Net to Reserves and Return	$ 133129	$ 115657	$ 109056	$ 116684	$ 117064	$ 109115	$ 91340

NOTE: The projected earnings as shown above, do not reflect beyond 1941, the effect of additional compressor station facilities and increased transmission operation and maintenance expense, which would be required to deliver the estimated future volumes of gas.

EXHIBIT 118

EXPLANATORY STATEMENT

HANCOCK

WRITTEN STATEMENT

OF

H. D. HANCOCK

In Exhibit No. 118 are set forth that part of the earnings and plant investment of Colorado Wyoming Gas Company devoted to the service of gas under sales for resale at Cheyenne, Wyoming only.

The earnings so apportioned, for the year 1939 and 10 months of the year 1940 are based on actual operation, and for the remainder of the period ending in 1945 are allocated on the projected earnings of the Company as shown in Exhibit No. 115. . The volume of gas sales, total revenue and cost of purchased gas are predicated on actual and expected sales at Cheyenne for re-sale. Transmission and operation expenses and general taxes are apportioned. Federal Income Taxes were based on Cheyenne earnings so found.

The portion of plant capacity and investment found for such Cheyenne service is based on the ratio of peak day demand in Cheyenne as compared with total peak day use of the main line.

As a part of the exhibit, there is also included an estimated plant investment required to render the Cheyenne sale for resale service. Such estimate is predicated on actual construction and capital costs as incurred by this Company in the years 1929 to 1931.

The exhibit thus shows the amount of plant devoted to the Cheyenne sale for resale service and the earnings therefrom for the period from 1939 projected from year to year to and including 1945.

EXHIBIT 118

STATEMENT NO. 1

COLORADO-WYOMING GAS COMPANY

ESTIMATED INVESTMENT

ARAPAHOE TO CHEYENNE
TO SERVE CHEYENNE ONLY

	Plant & Investment	P & I Less Depreciation
INVESTMENT		
6" Main Line - Arapahoe to Cheyenne	$ 784785	$ 724019
Loveland Compressing Station	36000	32985
Arapahoe Compressing Station	36000	32985
Cheyenne Town Border Measuring Station	2217	2084
Office Equipment	3000	2500
Automobiles	5000	2910
Tools	1200	600
Organization Expense	2000	2000
General Construction Expenditures	18092	16690
Working Capital	16400	16400
TOTAL	$ 904694	$ 833173

EXHIBIT 118

STATEMENT NO. 3

COLORADO-WYOMING GAS COMPANY

EARNING STATEMENT - SALES FOR RESALE AT CHEYENNE, 1939-1945

	1939	1940	1941	1942	1943	1944	1945
GAS SALES - M. C. F.							
Sales for Resale							
Domestic	439204	470800	494200	516900	537000	558300	578300
Industrial	54854	55165	55000	55000	55000	55000	55000
Total Gas Sales	494058	525965	549200	571900	592000	613300	633300
GROSS EARNINGS FROM OPERATION							
Sales for Resale							
Domestic	$ 166336	$ 177300	$ 185550	$ 194300	$ 201600	$ 208800	$ 216200
Industrial	15816	16000	15950	15950	15950	15950	15950
Total Gross Earnings from Operation	$ 182152	$ 193300	$ 201500	$ 210250	$ 217550	$ 224750	$ 232150
OPERATION AND MAINTENANCE							
Purchased Gas Expense	$ 99480	$ 113980	$ 119170	$ 124570	$ 129230	$ 138760	$ 153010
Transmission Operation	8840	10420	11350	12420	13220	14250	14750
Transmission Maintenance	1770	4650	7050	8890	9910	10930	11370
General Expenses							
Taxes - General	10750	11739	12283	12852	13454	14056	14658
Other	12470	12860	14330	12010	12450	12480	12600
Total Expenses	$ 133310	$ 153649	$ 164183	$ 170742	$ 178264	$ 190476	$ 206388
Gas Used by Company - Credit	1231	1096	956	1094	1173	1225	1280
Total Operation and Maintenance	$ 132079	$ 152553	$ 163227	$ 169648	$ 177091	$ 189251	$ 205108
Net Earnings from Operation	$ 50073	$ 40747	$ 38273	$ 40602	$ 40459	$ 35499	$ 27042
Federal Income Tax	3898	3369	2665	3174	3140	1950	-
Net to Reserves and Return	$ 46175	$ 37378	$ 35608	$ 37428	$ 37319	$ 33549	$ 27042

NOTE: The projected earnings as shown above, do not reflect beyond 1941, the effect of additional compressor station facilities and increased transmission operation and maintenance expense, which would be required to deliver the estimated future volumes of gas.

EXHIBIT 138

FEDERAL POWER COMMISSION
BUREAU OF ENGINEERING — DENVER REGIONAL OFFICE

FLOW DIAGRAM OF THE PIPE-LINE SYSTEMS OF CANADIAN RIVER GAS COMPANY, COLORADO INTERSTATE GAS COMPANY AND COLORADO-WYOMING GAS COMPANY FOR THE YEAR 1939

REVISIONS	DATE	BY

APP Reuben A. Ellsworth DATE 11-26-40
APP DATE
APP DATE
DRAWN BY J.C.S - J.L.H DATE OCT 28, 1940
CHECKED J.C.S
SCALE AS INDICATED

D-19-7

WYOMING

NEBRASKA

Ft Warren 15385
Cheyenne 414 807
430 362 (Across State Line)

MISCELLANEOUS SYSTEM DELIVERIES
MISC COMPANY USE, OTHER THAN COMPRESSING STATIONS... 3 558
FARM TAPS, ETC 2 519
UNACCOUNTED FOR 48 195
54 272

Wellington Station - 1819
Continental Oil Co - 3894
Colorado Portland Cement Co 864 390
Producers Canning Co - 283
Ft. Collins 336 261
169 281
467 691
Denver Pressed Brick Co 44 878
Highway Gas Co 4649
Loveland 38 468
Greeley 147 406
Berthoud Field
Goodstein Pipe Line Co 47 878
Ed Mosher 319
Berthoud 4723
Great Western Sugar Co 312 548
Johnstown 7737
2 200 621
Longmont 39 373
Ft Lupton 8739
Valmont Generating Station 26 710
Boulder 152 163
Brighton 24 562
Buner-Empson Co 33 820
Arvada Station 25 429
Aurora 27 410
Fitzsimons General Hospital 311 736
Golden Fire Brick Co 37 100
Golden 118 421
Adolph Coors Co 15 617
Denver Fringe 157 196
Denver 6 126 592
Sullivan 1861
Air Corps Technical School 4157
Englewood 92 810
Ft Logan 7972
Denver Board of Water Comm 7620
Littleton 25 977
343 303
Arapahoe Metering Station
Purchased By Colorado-Wyoming Gas Co 2 884 763
Sold By Colorado Interstate Gas Co 2 867 649
(Difference Due To Adjustment For Unbilled Gas)
9 518 602

COLORADO

Colorado Springs 805 981
Fountain Valley School 15 564
10 340 147
Colorado Portland Cement Co 1 678 091
Devine Station 24 486
12 040 724
Pueblo 452 992
Colorado Fuel & Iron Corp 7 257 379
Ordway 9070
Sugar City 783
Fowler 7369
Manzanola 2453
Amer Crystal Sugar Co 332 956
Rocky Ford 153 276
A T & S F R R Co 427 169
La Junta 82 228
Los Animas 24 849
Ft Lyon 886
Ft Lyon Hospital 212 065
7 710 371
19 751 095
1 153 249
147 300
237 903
20 904 344
U S D I Helium Plant 743
Canyon Station 133 578

CWG
CIG
CRG
AOC
PPC

KANSAS

OWNERSHIP

- CRG CANADIAN RIVER GAS COMPANY
- CIG COLORADO INTERSTATE GAS COMPANY
- CWG COLORADO-WYOMING GAS COMPANY
- AOC AMARILLO OIL COMPANY
- PPC PANHANDLE PIPE LINE COMPANY

SCALE IN MILLION MCF

ALL FIGURES ARE GAS VOLUMES IN MCF AT 14.65 POUNDS PER SQUARE INCH ABSOLUTE

NEW MEXICO

Clayton Station 88 431
Clayton 104 710
CLAYTON JUNCTION
Total Deliveries Off Line North Of This Point = 21 107 096
Total Purchases From C R G Co At This Point = 20 572 764
(Which Are Well Deliveries Less C R G Co Deductions)
21 211 806 (Across State Line)

Texline 9207
Dalhart 364 379
Hartley 5326
Dehydration Plant 5394
Total Deliveries Off Denver Line North Of Bivins Station = 21 594 112
Well Meters = 21 059 780

OKLAHOMA

21 038 665 (Across State Line)
20 367 632 (Across State Line)

Colorado Interstate Gas Co supplies approximately 25%, and Texoma Natural Gas Co supplies approximately 75%, of the total requirements of Natural Gas Pipeline Co Of America. This diagram shows only that portion supplied by Colorado Interstate Gas Company

20 367 632 Transmitted By Canadian River Gas Co Through Facilities Of Texoma Natural Gas Co

20 783 301 Delivered By Canadian River Gas Co To Fritch Station Of Texoma Natural Gas Co (Chicago Meter Station Reading)

20 191 512 Sold By Canadian River Gas Co To Colorado Interstate Gas Co (Well Meter Readings)

20 367 632 Sold By Colorado Interstate Gas Co To Natural Gas Pipeline Co Of America At Gray Junction, Oklahoma

TOTAL WELL PRODUCTION 46 783 394

Free Gas 9893
Company Use 712 451
Channing 10 090
Exell 638
Contract "B" Gas 4 799 484
Contract "C" Gas 184
4 799 668
Fritch 4886
4 794 144
1 103 750
West Texas Gas Co 184
3 690 394
Residue From U S D I Helium Plant 395 172 (Sold To U S Zinc Co By Amarillo Oil Co)
76 359 (Misc Sales, Company Use, Free Gas, Gas Lost And Unaccounted For
Sales To U S Zinc Co And Right Of Way Customers, Free Gas, Company Use And Gas Lost And Unaccounted For 1 103 566
Amarillo 3 614 035

TEXAS

EXHIBIT 118

STATEMENT NO. 2

COLORADO-WYOMING GAS COMPANY

CALCULATED MAIN LINE INVESTMENT

APPLICABLE TO CHEYENNE

	Plant & Investment		Plant & Investment Less Depreciation	
	Total	Applicable to Cheyenne	Total	Applicable to Cheyenne
MAIN LINES:				
Arapahoe to Golden Branch	$ 175200	$ 41879	$ 166223	$ 39733
Golden Branch to Boulder Branch	209783	61508	199035	58358
Boulder Branch to Brighton Branch	23079	7735	20986	7034
Brighton Branch to Greeley Branch	219968	77603	200011	70565
Greeley Branch to Fort Collins	146829	68673	132967	62445
Ft. Collins to Cement Branch	39637	37497	36568	34594
Cement Branch to Wellington Station	55839	52824	51518	48734
Wellington Station to Cheyenne	202129	195629	186478	178922
Sub Total - Main Line	$ 1071854	$ 641655	$ 993783	$ 500380
General Construction Expenditures	68653	26957	63333	24868
Compressing Stations	236920	114931	217145	103585
Compressing Stations in Course of Construction	44688	13102	44688	13102
Measuring Stations	51383	2217	48300	2084
Telephone Lines	499	479	474	455
Office Equipment	3415	1617	2903	1374
Automobiles	5053	2392	2941	1392
Tools	1296	614	648	307
Organization Expenditures	3472	1644	3472	1644
Miscellaneous Branch Lines, Meters, Regulators and Other Non-Applicable Investment	451877	-	414866	-
Working Capital	45490	16401	45490	16401
Sub Total	$ 912746	$ 180354	$ 844260	$ 165212
Grand Total	$1984600	$ 722009	$ 1838043	$ 665592

Q. I will ask you whether in connection with that assignment you prepared, or there was prepared under your direction and supervision a study of the flow of gas through the lines of Canadian River Gas Company, Colorado Interstate Gas Company, and Colorado-Wyoming Gas Company?

A. There was prepared under my supervision a map which we called a flow diagram.

Q. I will ask you whether this is the flow diagram that was prepared by you or under your supervision and direction.

A. This map or diagram was prepared under my supervision.

Mr. Lange: Will the stenographer please mark this diagram for identification as an exhibit?

The Trial Examiner: It will be marked for identification as Exhibit No. 138.

(Exhibit 138, Witness O'Connor, marked for identification.)

By Mr. Lange:

Q. Mr. O'Connor, I will ask you whether in connection with the preparation of that flow diagram or map identified as Exhibit No. 138 you have prepared a written statement describing it?

A. I have.

Q. Will you read that statement for the record, Mr. O'Connor?

A. "Exhibit No. 138 is a graphical map, prepared under my supervision, entitled 'Flow Diagram of the Pipe Line Systems of Canadian River Gas Company, Colorado Interstate Gas Company, and Colorado-Wyoming Gas Company for the Year 1939.'"

"The basic data used in preparing the exhibit were obtained from maps and information supplied by the companies, and from information collected by the Commission's engineering and accounting staff from the records of the companies.

"The diagram shows, in graphic form, the volumes of

gas transmitted by the companies listed on the diagram, the volumes delivered and sold at each delivery point, and the volumes used by the companies or lost in operations, for the year 1939. The diagram, in effect, shows the disposition of the total volume of gas produced by Canadian River Gas Company in the Texas Panhandle Field in 1939.

"All figures on the diagram are gas volumes in Mcf. at 14.65 pounds per square inch absolute. Company records of gas volumes, at various pressure bases, were converted to 14.65 pounds per square inch absolute by multiplying volumes shown on company records by the ratio of the absolute pressure bases on which the volumes were recorded to 14.65. Volumes recorded by the companies have not been corrected for any other factors.

"The approximate geographical locations of all gas deliveries are shown on the map. The volume of gas transmitted through the pipe lines is graphically illustrated by the width of the flow lines. In general, their width is directly proportional to the total volume of gas which flowed past any given point during 1939. The volume of gas sold to each direct customer, pipe line company, and distribution system in 1939 is shown.

"In the lower right-hand corner, there is a rectangle which indicates the total well production of Canadian River Gas Company in 1939, amounting to 46,783,394 Mcf. The diagram shows that this well production is delivered as follows:

"To the Denver line, 21,059,780 Mcf., or 45.0 per cent.

"To the Chicago line, 20,191,512 Mcf., or 43.2 per cent.

"To Amarillo Oil Company in the field for resale at Channing, and at Amarillo and vicinity, 4,809, 758 Mcf., or 10.3 per cent.

"Company use in the field and free gas to lessors, 722,344 Mcf., or 1.5 per cent.

"The wide black line extending south indicates the total volume of gas sold by Canadian River Gas Company to Amarillo Oil Company for resale at Amarillo and vicinity under contracts 'B' and 'C' (Exhibits 16-B and 16-C in this proceeding)."

Q. Right at that point, Mr. O'Connor, will you indicate on this flow chart those points?

A. This rectangle is one that indicates the total production.

Q. Put a mark there. That indicates what?

A. That indicates the total production of Canadian River Gas Company's wells in 1939.

Q. All right, proceed.

A. "The diagram also shows the disposition of this gas, including the amount ultimately delivered by Panhandle Pipe Line Company to Amarillo Gas Company for resale to consumers in Amarillo, Fritch, and Exell; the volume sold to West Texas Gas Company near Amarillo by Amarillo Oil Company; and the volume delivered to the smelter of the United States Zinc Company at Amarillo by Amarillo Oil Company. This section of the diagram also shows the volume of residue gas which Amarillo Oil Company purchased from the helium plant operated by the United States Bureau of Mines near Amarillo, and resold to the United States Zinc Company.

"The wide line extending in a northeasterly direction indicates the volume of gas which Canadian River Gas Company transmitted through the facilities of Texoma Natural Gas Company to Gray Junction, Oklahoma, and sold to Colorado Interstate Gas Company at that point. At the same location, Colorado Interstate Gas Company sold the gas to Natural Gas Pipeline Company of America for resale to direct customers and to distribution companies in Kansas, Nebraska, Iowa and Illinois. Colorado Interstate Gas Company supplies approximately 25 per cent, and Texoma Natural Gas Company supplies approximately 75 per cent of the total natural gas requirements of Natural Gas Pipeline Company of America. The diagram shows only the portion supplied by Colorado Interstate Gas Company. If the entire volume transmitted through the facilities of Texoma Natural Gas Company to Gray Junction, Oklahoma to supply Natural Gas Pipeline Company of America were shown, the flow line would be approximately four times as wide."

Q. When you speak of the flow line, Mr. O'Connor, will you indicate what you mean on this chart?

A. The flow line I was just speaking about was this line here running up to the northeast.

Q. You were speaking there of what particular flow of gas?

A. The gas transported through the facilities of Texoma Natural Gas Company by Canadian River Gas Company for delivery to Colorado Interstate Gas Company at Gray Junction, Oklahoma.

Q. For what ultimate destination?

A. For resale by Colorado Interstate Gas Company at Gray Junction, Oklahoma to the Natural Gas Pipeline Company of America which in turn transmits the gas through Oklahoma, Nebraska, Iowa, and Illinois, and sells gas in those states to direct customers and distribution companies or to other pipe line companies.

Q. All right.

A. "The line extending in a general northwesterly direction shows the volume of gas handled on the transmission systems owned and operated by Canadian River Gas Company, Colorado Interstate Gas Company, and Colorado-Wyoming Gas Company. Along this interconnected pipe line system, volumes * * *"—

Mr. McCreery: Just a minute. At this point I wish to object to the statement just read into the record as testimony, it being purely a legal conclusion of the witness and I wish to strike "along this interconnected pipe line system." It doesn't say "systems," it says "system." I move to strike it as a purely legal conclusion of the witness and it is not proper testimony.

The Trial Examiner: We will give that matter consideration, Mr. McCreery. I don't see that it is at all harmful. The motion will be denied.

Mr. McCreery: Exception.

By Mr. Lange:

Q. Proceed, Mr. O'Connor.

A. "* * * volumes are delivered and sold at various points, and the width of the flow line decreases correspondingly. Slight reductions in the width of the flow line occur at Hartley, Dalhart, and Texline where Canadian River Gas Company sells gas to Amarillo Oil Company for resale to Dalhart Gas Company, and at Clayton, New Mexico where Canadian River Gas Company sells gas to Clayton Gas Company."

Q. Where are those points on the flow-chart?

A. Those points are on the flow line extending northwest. Here is Hartley, Dalhart, and Texline, and Clayton.

The Trial Examiner: They are designated on the map, Mr. O'Connor?

The Witness: Yes, sir.

By Mr. Lange:

Q. Proceed.

A. "A more substantial reduction in the width of the main flow line occurs at the point where the La Junta lateral of Colorado Interstate Gas Company takes off to serve direct customers and distribution systems in the Arkansas Valley in Colorado.

"A sharp reduction in the width of the flow line occurs at Pueblo due to the large deliveries to Colorado Fuel and Iron Corporation, and another considerable decrease in the width of the flow line occurs where gas is taken off for delivery to Colorado Portland Cement Company at Portland, Colorado.

"The flow line is further reduced as deliveries are made to the City of Colorado Springs. A sharp reduction in the width of the flow line occurs at Denver, where deliveries are made to Public Service Company of Colorado. The flow line extending from Denver north, with numerous branches, indicates gas handled and sold by Colorado-Wyoming Gas Company. The flow line for this company decreases in size as deliveries are made to various customers, and terminates as a narrow line at Fort Warren, Wyoming.

"Fairly substantial reductions in the width of the flow line for Colorado-Wyoming Gas Company occur at the point where the gas is taken off for delivery to Colorado Portland Cement Company at La Porte, and at the Greeley-Johnstown-Great Western Sugar Company lateral from which gas is delivered to Great Western Sugar Company and also to the distribution systems at Greeley and Johnstown, Colorado.

"This diagram serves to graphically portray the relative volumes of natural gas delivered at various points and to various consumers along the pipe line system. For in-

stance, the diagram shows that the largest delivery, 20,367,632 Mcf. was made at Gray Junction, Oklahoma to Natural Gas Pipeline Company of America, the second largest delivery, 7,257,379 Mcf., was made to Colorado Fuel and Iron Corporation at Pueblo, and the third largest delivery, 6,196,882 Mcf. was made to Public Service Company of Colorado for resale in Denver.

"The diagram also facilitates comparison of the volumes of gas delivered at the several points. For instance, among the many comparisons that can be made, the following are cited here:

"(1) Deliveries to the Chicago line are very nearly equal to deliveries to the Denver line.

"(2) Sales to Colorado Fuel and Iron Corporation at Pueblo are greater than deliveries at any other point on the Denver line. Sales to Colorado Fuel and Iron Corporation were 1,060,497 Mcf. or 17 per cent greater than sales to Public Service Company of Colorado at Denver, the second largest delivery on the Denver line.

"(3) Sales by Colorado Interstate Gas Company to Colorado Portland Cement Company at Portland, Colorado, the second largest direct customer on the Denver line, were 1,676,091 Mcf. which is 220,537 Mcf. greater than the total volume of gas (1,455,554 Mcf.) sold by Colorado Interstate Gas Company to all distribution systems, except Public Service Company of Colorado.

"(4) Sales by Colorado Interstate Gas Company to Colorado Fuel and Iron Corporation and Colorado Portland Cement Company, its two largest direct customers, were 8,933,470 Mcf. which is approximately 10 per cent more than Colorado Interstate's sales of 8,106,507 Mcf. to all distribution companies, including Public Service Company of Colorado.

"(5) Colorado Interstate's total sales in the Arkansas Valley were 1,153,249 Mcf. Of this total, 972,232 Mcf, or 85 per cent was sold to three direct customers, and the remaining 15 per cent, or 181,017 Mcf. was delivered to eight distribution systems. Deliveries to each of the three direct customers were greater than total deliveries to all eight distribution systems.

"(6) Sales by Colorado Interstate Gas Company to the distribution system at Pueblo, a city of approximately 50,000 population served by a 16-inch pipe line, were 452,992 Mcf. or only 9 per cent more than sales by Colorado-Wyoming Gas Company to the distribution system at Cheyenne, Wyoming, a city of approximately 20,000 population served by a 6-inch pipe line.

"(7) The largest single delivery by Colorado-Wyoming Gas Company is made from the company's Cement Branch line to the Colorado Portland Cement Company at La Porte. This sale was 864,390 Mcf. in 1939, and was greater than the sum of the deliveries to the two largest distribution systems served, Fort Collins and Cheyenne. Deliveries to the two cities totaled 751,068 Mcf.

"(8) Colorado-Wyoming's second largest outlet was the Greeley-Johnstown-Great Western Sugar Company branch line. Total sales from this line in 1939 were 467,691 Mcf. of which 312,548 Mcf. or 67 per cent was sold to Great Western Sugar Company, a direct customer, and 155,143 Mcf. or 33 per cent was sold to the distribution systems at Greeley and Johnstown, Colorado.

"The diagram also shows state lines and the approximate volumes of gas which crossed various state lines through facilities owned or leased by Canadian River Gas Company, Colorado Interstate Gas Company, and Colorado-Wyoming Gas Company.

"No gas measurements are made at state lines by any of the companies. The volume of gas shown as having crossed the Colorado-Wyoming state line is the sum of deliveries to Cheyenne and Fort Warren, or 430,362 Mcf. The volume shown on the diagram as crossing the New Mexico-Colorado state line, 21,038,665 Mcf. is the summation of the volumes of gas recorded as sold and used by Colorado Interstate Gas Company north of that boundary.

"The volume of gas shown as crossing the Texas-New Mexico state line is the sum of the preceding figure, 21,038,665 Mcf., the volume used at Clayton compressing station, 68,431 Mcf., and the volume sold to Clayton Gas Company, 104,710 Mcf. or a total of 21,211,806 Mcf.

"The volume of gas shown on the diagram as crossing the

Texas-Oklahoma state line, 20,367,632 Mcf. is the amount sold by Colorado Interstate Gas Company to Natural Gas Pipeline Company of America, at Gray Junction, Oklahoma."

Q. Now, Mr. O'Connor, in the preparation of this flow chart and the written statement that you have just read, did you have access to and get this information from the books and records of the companies—or, rather, from what sources did you get all that information?

A. A good deal of it was compiled by the accounting staff from sales records on these various pressure bases which the companies sell the gas on and then we converted it to 14.65 pounds per square inch absolute. The engineering staff also collected some of the information on gas used by the company and other items of that nature.

Now, the figures that are on there as crossing state lines are not from the records of the companies. They are just additions, as I explained in my statement.

Q. When you say "on there," you mean the flow chart, Exhibit 138?

A. On Exhibit 138.

Q. Now, are there any particular features of that flow chart that you haven't entirely covered in your statement that you need to explain further?

A. Well, I might point out there that there is on the line running to the northeast representing deliveries through the facilities of Texoma Natural Gas Company, there are a number of different figures and—

Q. Will you point out and name those particular points that are identified by those figures and explain them?

A. The first figure on this flow line is 20,191,512 Mcf. sold by Canadian River Gas Company to Colorado Interstate Gas Company (well meter readings). That represents the aggregate production of the wells of Canadian River Gas Company feeding into the Fritch station of the Texoma Natural Gas Company with deductions for gas used between the well head and the Fritch — and the Chicago measuring station and also includes the deliveries from one well of the Canadian River Gas Company called Sanford A-1 which delivers directly into the gathering system of Texoma.

The next figure, 20,783,301 Mcf. is labeled "Delivered by Canadian River Gas Company to Fritch station of Texoma Natural Gas Company (Chicago Meter Station Reading)."

That is the volume determined from the reading of the single measuring station which is located approximately one and one-half miles upstream from the Fritch station of Texoma Natural Gas Company. The well readings previously referred to are the summation of a number of well readings and the difference between the well figure and the Fritch or Chicago meter station reading figure, is due to a difference in the method of computing the volumes and measuring the volumes.

Then there is a third figure on this line which is 20,367,632 Mcf. which is labeled "Transmitted by Canadian River Gas Company through the facilities of Texoma Natural Gas Company."

Now, that is, the second figure mentionged, 20,783,301 Mcf., which is measured at the Chicago meter station, with deduction of two per cent for shrinkage in volume of natural gas processed at the Fritch gasoline plant of Texoma Natural Gas Company, that two per cent is in accordance with the terms of the contract between the two companies.

Then the figure shown at the end of this flow line representing the point at which Colorado Interstate Gas Company sold the gas to the Natural Gas Pipeline Company of America, namely Gray Junction, Oklahoma, is also 20,367,632 Mcf., which is the same figure as just previously referred to and that is pursuant to the contract as the amount which Colorado Interstate Gas Company bills to Natural Gas Pipeline Company of America.

Q. Now, the description at the point called Clayton Junction, will you describe that, or will you explain that?

A. At the point called Clayton Junction, there is a note which states: "The total deliveries of the line north of this point equal 21,107,096 Mcf." That is the first notation. That represents the sum of the sales by Colorado Interstate on its pipe line system which is all north of Clayton Junction plus the volumes of gas used by the company in operating its three compressing stations.

The notation below that is: "Total purchases from Canadian River Gas Company at this point equals 20,572,764 Mcf. (which are well deliveries less Canadian River Gas Company deductions)."

That figure represents the total delivery of the wells of Canadian River Gas Company feeding into the Denver line less the amount of gas used by Canadian River Gas Company and the amount sold and used on the Canadian River transmission line between Bivins and Clayton Junction.

Q. In other words, when you speak of Clayton Junction, is that the junction point of the physical connection between Canadian River Gas Company's main transmission line and Colorado Interstate Gas Company's line?

A. That's right.

Q. Transporting gas out of Texas through New Mexico into Colorado?

A. I didn't quite get that.

Q. Canadian River Gas Company's line transporting gas out of the state of Texas through New Mexico, where it connects with Colorado Interstate Gas Company's line and then proceeds into Colorado?

A. Yes. The Colorado Interstate Gas Company line runs from Clayton Junction north into Colorado.

Q. Now, then, where on this map is what is known as the Denver gate? Will you mark an X-2 at that point?

A. X-2?

Q. Yes.

A. Right here (indicating), this figure represents delivery to Denver, in 1939. I have marked it X-2 on this exhibit.

Q. And mark X-3 at the point of delivery of the gas to Colorado-Wyoming Gas Company.

A. I have marked X-3 at the point on the diagram which indicates the Arapahoe metering station where Colorado-Interstate Gas Company sells gas to the Colorado-Wyoming Gas Company.

Q. Now, then, the several smaller outlets or branches that are indicated are all labeled with the name of the company or distribution company purchasing the gas from Colorado Interstate Gas Company?

A. Well, where the Colorado Interstate Gas Company sells gas to a direct customer we have the name of that customer on the diagram and in other cases we have the

name of the town served with gas which some distribution company purchases from Colorado Interstate Gas Company.

Q. So as I understand it, then, where direct main line sales are made by Colorado Interstate Gas Company you have the name of that purchasing company given, and where sales are made to distributing companies for resale you give the name of the town where that distributing company is located?

A. That is right.

Q. And do you pursue the same method with reference to deliveries off Colorado-Wyoming Gas Company's line?

A. The same general procedure is followed.

Q. Now, then, the diagram also shows deliveries made at Amarillo, Texas, or at Amarillo, as you have marked it. What does that indicate?

A. That shows the total amount of gas sold to the Amarillo Gas Company by the Panhandle Pipe Line Company in 1939 for delivery in Amarillo and vicinity.

Q. Amarillo, Texas?

A. Amarillo, Texas.

Q. Now, what other deliveries are there made along that line south of the description, "Total Well Production, 46,783,394 Mcf."?

A. That's right, all the figures on this diagram are Mcf., at 14.65 pounds per square inch absolute.

Well, south of this rectangle representing the total well production, first there is a small line which is labeled "Free Gas, 9,893 Mcf." That represents the amount of gas which Canadian River Gas Company gave to lessors.

The next line is larger, and is labeled "Company Use, 712,451 Mcf." That is the amount of gas that Canadian River Gas Company used in its field operations and at the Bivins station.

The next line says, "Channing, 10,090 Mcf." That represents the amount of gas which Canadian River Gas Company sold to Amarillo Oil Company in the field and Amarillo Oil Company transports it to Channing where it is sold to the Dalhart Gas Company which sold it to the consumers in Channing.

Below that there are little lines, where it says, "Exell

638 Mcf.," and opposite that "Fritch, 4,886." That represents the amount distributed in two small towns in the field which are served with gas from the Canadian River Gas Company property, and then the main line below that represents the gas going into Amarillo. There is a small branch which says, "76,359 Mcf.," labeled "Miscellaneous sales, Company Use, Free Gas, Gas Lost and unaccounted for by Panhandle Pipe Line Company," and then over here on the left is another branch which says, "184 Mcf., West Texas Gas Company," and then a larger line which says, "1,103,566 Mcf., Sales to United States Zinc Company, and Right of Way Customers, Free Gas, Company Use and Gas Lost and Unaccounted for."

Q. Now, I notice to the right you have a descriptive phrase which says, "Contract B Gas, Contract C Gas," and giving the amounts. What do you have reference to there?

A. I think I mentioned in my written statement that Canadian River Gas Company sells gas to Amarillo Oil Company under those two contracts which are called "Contract B," and "Contract C," the contracts generally referred to by the company employes and in the company's records as being Contract "B" and Contract "C." The diagram shows that under Contract B, Canadian River Gas Company sold 4,799,484 Mcf., and under Contract C, 184 Mcf., or a total under those two contracts of 4,799,668 Mcf.

Q. To Amarillo?

A. All that was sold to Amarillo Oil Company.

Q. And its ultimate destination—or in what direction did it move on this flow, the chart below—on the flow line below total well production, 46,783,394?

A. It flowed south.

Q. All right, now, the chart has a legend indicating the ownership of the several pipe lines described on the chart?

A. Yes, that is right.

Q. And the abbreviations under that legend are indicated along the course of the pipelines and along the course of the flow of gas through those lines?

A. The symbols were intended more to represent who owns the gas rather than who owns the pipe lines on this map.

Q. Oh, yes, there is another matter of information. I wish you would point out, Mr. O'Connor, with reference to the descriptive phrase, "Total Deliveries of Denver line North of Bivins Station, Equal to 21,594,112 Mcf."

A. Well, there is another notation right below it which says, "Well meters, 21,059,780 Mcf."

The second figure represents a total of the well meter readings feeding into the Denver line less the deductions for gas used by Canadian River Gas Company in its own operations.

The other figure, 21,594,112 Mcf., represents the summation of all the gas sales north of the Bivins compressing station discharge, plus the amount of gas which—that is the sales north of the Bivins station discharge by Canadian River Gas Company and Colorado Interstate Gas Company and used by those two companies and the difference between those two figures is accounted for by the difference in measurement procedure.

Q. Now, then, does the flow chart have indicated on it the location of each of the compressor stations?

A. Well, we just have a line showing the amount of gas going off—or being used at each compressing station.

Q. You mean for use in the operation of the compressing station?

A. That's right.

Q. That is indicated under each notation of the compressor station?

A. That is, each compressing station on the Denver line is shown, the amount used at each one in 1939. The amount used at the Bivins station is combined in here with this total company use figure, 712,451 Mcf.

Q. Now, then, when you get up to the delivery point to the Colorado-Wyoming Gas Company, I notice there is a notation under "Arapahoe Metering Station." Will you explain that?

A. Well, the top figure, 2,884,763 Mcf. represents the volume purchased by Colorado-Wyoming Gas Company from Colorado Interstate Gas Company as recorded on the company's books, converted to this 14.65-pound base. It is slightly different from the amount shown below it labeled, "Sold by Colorado Interstate Gas Company, 2,867,649 Mcf."

The difference between those two figures is accounted for by the fact that one company makes accounting adjustments at the end of each year in which they estimate—well, their billing period ends at different times, but on the Colorado-Wyoming Gas Company, the billing period ends on the 25th of each month, and then the Colorado Interstate Gas Company estimates the—or records the delivery from the 26th to the 31st, and estimates the revenue received from that gas and puts that on the books in December of one year and they go through what they call a reversing entry the next year—in January of the next year, and then they repeat that over again.

The figures on the two books are slightly different.

Q. Now, then, you have an indication on the diagram for the year 1939 to that?

A. That's right.

Q. And also you have a scale. Will you describe that scale in the center of the diagram?

A. Well, this shows the scales to which this flow line is drawn, and it shows the graduation. The scale is millions of Mcf., and one small space is one million Mcf. on this diagram.

Q. And the diagram also shows the boundary line of each of the states?

A. That's right.

Q. Does it not?

A. Yes. The flow line is drawn approximately in the location at which the pipe lines of the companies are located, but, of course, it is impossible to be exact because it is drawn on a big wide line on a small diagram. I would like to make one further statement in regard to this figure—

Mr. Spencer: What figure is that?

The Witness: The figure of 2,867,649 Mcf., sold by Colorado Interstate Gas Company to Colorado-Wyoming Gas Company. I think there is an adjustment in there by the Commission's accounting staff.

Mr. Lange: I believe that is all for the present.

The Trial Examiner: I see it has reached the usual hour of recess. I might say, though, for the guidance of counsel that inasmuch as this exhibit deals with the three company

respondents here, I think perhaps we might take up cross examination in the order of the companies named on Page 1 of the exhibit, so if counsel will bear that in mind we will proceed in that manner with the cross examination.

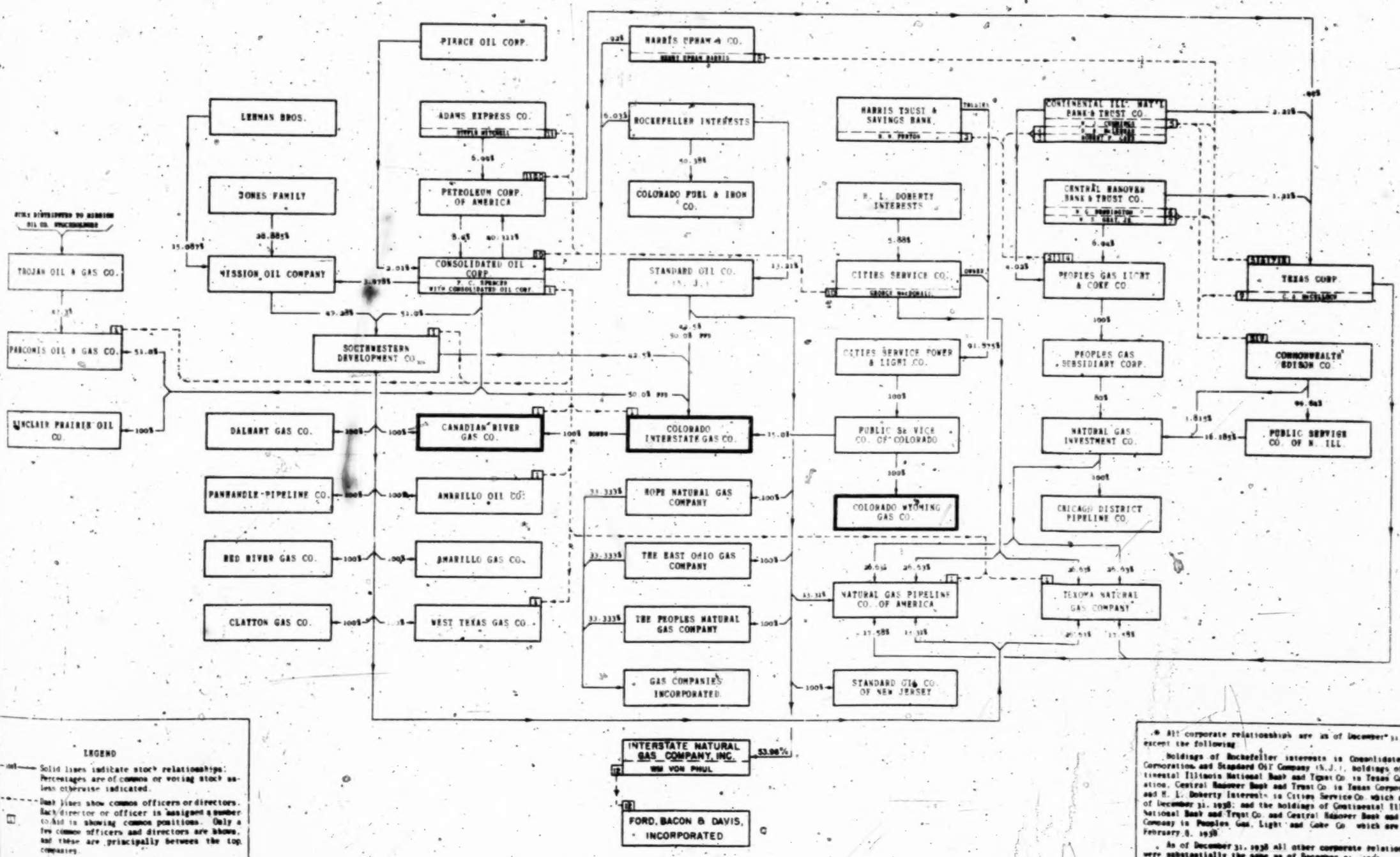
Mr. Lange: Mr. Examiner, I want to have this written statement given an identification number.

The Trial Examiner: It will be marked for identification as Exhibit No. 138-A. I believe that would be less confusing.

(Vol. 33, pp. 4653-4676.)

EXHIBIT 141

CHART SHOWING CORPORATE RELATIONSHIP BETWEEN CANADIAN RIVER GAS CO., COLORADO INTERSTATE GAS CO., COLORADO-WYOMING GAS CO., AND CERTAIN OTHER COMPANIES, AS OF DECEMBER 31, 1939*



LEGEND

- Solid lines indicate stock relationships: Percentages are of common or voting stock unless otherwise indicated.
- Dash lines show common officers or directors. Each director or officer is assigned a number to aid in showing common positions. Only a few common officers and directors are shown, and these are principally between the top companies.

* All corporate relationships are as of December 31, 1939 except the following:

Holdings of Rockefeller interests in Consolidated Oil Corporation and Standard Oil Company (N.J.), holdings of Continental Illinois National Bank and Trust Co. in Texas Corporation, Central Hanover Bank and Trust Co. in Texas Corporation and H. L. Doherty Interests in Cities Service Co. which are as of December 31, 1938; and the holdings of Continental Illinois National Bank and Trust Co. and Central Hanover Bank and Trust Company in Peoples Gas Light and Coke Co. which are as of February 8, 1938.

As of December 31, 1938 all other corporate relationships were substantially the same as of December 31, 1939.

For other notes see attached alphabetical source index.

Commission Exhibit No. 142.

Canadian River Gas Company

1. Persons Holding Stock

Name	Percentage	Date	Source
Southwestern Development Company	100%	12/31/39	Canadian River Gas Company records in New York. Also SEC File 30-6-2 Southwestern Development Company Annual Supplement Form U5S Exhibit A, page 31.

1A. Persons Holding Bonds

Colorado Interstate Gas Company	100%	12/31/39	Canadian River Gas Company and Colorado Interstate Gas Company records in New York.

EXHIBIT NO. 142

3. Common Officers or Directors with Certain Other Companies

Name	No.	Position	Other Companies	Position	Sources
P. C. Spencer*	1	Vice President and Director	Southwestern Development Co.	Vice President and Director	P.R.D. 1940 page 2897 Also Southwestern Development Company 1939 annual supplement to Registration Statement to S.E.C. Form U5S SEC File No. 30-6-2
			Amarillo Oil Co.	Vice President	Ditto
			West Texas Gas Company	Vice President and Director	Ditto
			Colorado Interstate Gas Co.	Director	Colorado Interstate Gas Company records
			Parcomis Oil & Gas Company	President and Director	Parcomis Oil & Gas Company records
			Natural Gas Pipeline Company of America	Director	Natural Gas Pipeline Company of America 12-31-39 report to F.P.C.—Form No. 133
			Texoma Natural Gas Company	Director	Texoma Natural Gas Company 12/31/39 report to F.P.C. Form No. 133

*P. C. Spencer is also an employee of Consolidated Oil Corporation. Source—Testimony in hearing of October 11, 1940, before Securities and Exchange Commission in re: Southwestern Development Company per official report on Proceedings, page 7. SEC File No. 70-146-1.

Cities Service Company

1. Persons Holding Stock

Name		Percentage	Date	Source
Henry L. Doherty interests*				
This stock is held as follows:				
G. Gordon Brownell,				
75 Montgomery St., Jersey City, N. J.	151,789.2			
Henry L. Doherty,				
75 Montgomery St., Jersey City, N. J.	22,655.8			
Gas & Electric Securities Co.,				
75 Montgomery St., Jersey City, N. J.	18,000.			
Nela Alpha Anticipation Co.,				
75 Montgomery St., Jersey City, N. J.	15,546.4			
Cities Service Securities Co.,				
19-21 Dover Green, Dover, Delaware	5,889.			Hearings before the Temporary National Economic Committee Congress of the U. S. 76th Congress, 2nd Session, pursuant to Public Resolution No. 113, 75th Congress, Appendix 3, pp. 8005-6.
First Doherty Organization Ant. Co.,				
75 Montgomery St., Jersey City, N. J.	2,101.4			
First Doherty Organization Inv. Co.,				
75 Montgomery St., Jersey City, N. J.	1,848.4			
Total	217,830.2	5.88%	12-31-1938	

*In Poor's Register of Directors for 1940, p. 1624, Henry L. Doherty (now deceased) is listed as President and Director of all the companies listed above, including Cities Service Company and Cities Service Power & Light Co. It is disclosed in the returns filed by the Cities Service Co. and the Hearings before the Temporary National Economic Committee as of March 15, 1938, that G. Gordon Brownell held stock as nominee for H. L. Doherty and Henry L. Doherty & Company.

Additional information as to Henry L. Doherty interests is contained in a letter dated February 10, 1940, copy of which is as follows:

EXHIBIT NO. 142
4

Henry L. Doherty & Company, Inc.
75 Montgomery Street
Jersey City, N. J.

February 10th, 1940.

Mr. Leon Henderson, Securities & Exchange Commission,
Washington, D. C.

Dear Mr. Henderson: In response to your letter of February 3rd this is to advise that as of Sept. 30, 1939 the interest of Henry L. Doherty in stocks of Cities Service Company and Empire Gas and Fuel Company as set forth in your letter is as follows:

As previously reported to the S. & E. Com. Henry L. Doherty & Company, Inc. is a holding and operating company all of the stock of which on September 30, 1939 was owned by Henry L. Doherty.

Gas Securities Company, an intermediate subsidiary company, in which Henry L. Doherty & Co., Inc. owned 1578.92 shares of Pfd. stock out of a total outstanding, excluding treasury stock, of 2586.80 shares, and 2731.25 shares of Common Stock out of a total outstanding, excluding treasury stock, of 2856.25 shares.

The ownership of Henry L. Doherty & Company, Inc. and Gas Securities Company in Gas & Electric Securities Company was as follows:

	Preferred	Common
Shares issued and outstanding	10,000	28,707.29
Shares owned by Henry L. Doherty & Company, Inc.	5,977	4,915.57
Shares owned by Gas Securities Company	163	20,963.07
Total shares owned by Henry L. Doherty & Co. Inc. and Gas Securities Company	6,140	25,878.64

As of Sept. 30, 1939 there was an accumulation of unpaid dividends on the Pfd. stock of Gas & Electric Securities Co. of $513,333.33, and the company had liabilities of $2,951,589.72 of which amount $2,083,370.84 was owed to Gas Securities

Company and $868,125.00 owed to Henry L. Doherty & Company, Inc.

The ownership of Henry L. Doherty & Company, Inc. in First Doherty Organization Anticipation Company was as follows:

	Preferred	Common
Shares issued and outstanding	1400	487.16
Shares owned by Henry L. Doherty & Company, Inc.	904	284.65

The ownership of Henry L. Doherty & Company, Inc. in First Doherty Organization Investing Company was as follows:

	Preferred	Common
Shares issued and outstanding	7801	1152.52
Shares owned by Henry L. Doherty & Company, Inc.	3244	753.03

The ownership of Henry L. Doherty & Company, Inc. in Nela Alpha Anticipation Company was as follows:

	1st Pref	2 Pref	Common
Shares issued and outstanding	14,974	1,496	24,580.46
Shares owned by Henry L. Doherty & Co., Inc.	14,920	1,496	24,533.31

As of September 30, 1939, this company had liabilities of $201,838.30 of which $201,740.92 was owed to Henry L. Doherty & Company, Inc. Unpaid dividends had accumulated on the 1st preferred stock in the sum of $35,188.90 and on the 2nd preferred stock in the sum of $3,515.60 since November 1, 1935.

In the Participation Fund Henry L. Doherty & Company, Inc., owned the following Certificates of Interest:

Certificates issued and outstanding	171,841.80
Certificates owned by Henry L. Doherty & Co., Inc.	2,705.00

Very truly yours,

HENRY L. DOHERTY & COMPANY, INC.
By: (name not legible)
Assistant Treasurer

EXHIBIT NO. 142

2. Stock Held in Other Companies

Name	Percentage	Date	Source
Texoma Natural Gas Company	26.63%	12-31-39	Texoma Natural Gas Company 12/31/1939 Report to F.P.C. Form No. 133
Natural Gas Pipeline Co. of America	26.63%	12-31-39	Natural Gas Pipeline Company of America, 12/31/1939 Report to F.P.C. Form No. 133
Cities Service Power & Light Co.** (This stock is held by Harris Trust & Savings Bank as Trustee)	91.875% (Beneficial owner)	12-31-39	Cities Service Power & Light Company 1939 Annual Supplement to Registration Statement to S.E.C. Form U-5 S. S.E.C. File No. 30-108-2-1. Item 15.

**"On July 11, 1939, Cities Service Company duly entered into an indenture with Harris Trust and Savings Bank (an Illinois corporation), as Trustee, dated July 11, 1939, a copy of which is hereto annexed and made a part hereof, marked Exhibit B-8, wherein and whereby Cities Service Company pledged with said Trustee as security for the payment of the principal and interest of its outstanding debentures, aggregating in principal amount in excess of $177,000,000, all of the outstanding 600,000 shares of common stock of Cities Service Power & Light Company of the par value of $100 each (of which 48,750 shares were subject to the lien of a prior pledge and the rights and powers conferred by said indenture with respect to said shares were made subordinate to said prior pledge) and an undivided 10% interest in 121,854 shares of preferred stock, without par value, of Cities Service Power & Light Company; and wherein and whereby Cities Service Company conferred upon said Trustee, as pledgee aforesaid, the right to exercise at all times during the life of said indenture and whether before or after default, the full voting power for all purposes of all of said common and said 121,854 shares of preferred stock of Cities Service Power & Light Company; and wherein and whereby Cities Service Company conferred upon said Trustee the right to collect and receive any and all dividends, including liquidating dividends, on, as well as the proceeds of any sale of, such common stock and such undivided 10% interest in the preferred stock of Cities Service Power & Light Company."

Cities Service Power & Light Company

1. Persons Holding Stock

Name	Percentage	Date	
Harris Trust & Savings Bank, Trustee, under an indenture dated July 11, 1939, between Cities Service Company and aforesaid bank*	91.875% (Trustee)	12/31/1939	Cities Service Power & Light Company, 1939 Annual Supplement to Registration Statement to S.E.C. Form U-5 Item 15. S.E.C. File No. 30-108-2-1.
Cities Service Company (Beneficial owner of stock, held by Harris Trust & Savings Bank, Trustee).*	91.875% (Beneficial owner)	12/31/1939	"
Consolidated Cities Light Power & Traction Company (Subsidiary of Cities Service Co. Not shown on corporate relations chart)	8.125%	12/31/1939	"

2. Stock Held in Other Companies.

Public Service Company of Colorado	100%	12/31/1939	"

***"On July 11, 1939, Cities Service Company duly entered into an indenture with Harris Trust and Savings Bank (an Illinois corporation), as Trustee, dated July 11, 1939, a copy of which is hereto annexed and made a part hereof, marked Exhibit B-8, wherein and whereby Cities Service Company pledged with said Trustee as security for the payment of the principal and interest of its outstanding debentures, aggregating in principal amount in excess of $177,000,000, all of the outstanding 600,000 shares of common stock of Cities Service Power & Light Company of the par value of $100 each (of which 48,750 shares were subject to the lien of a prior pledge and the rights and powers conferred by said indenture with respect to said shares were made subordinate to said prior pledge) and an undivided 10% interest in 121,854 shares of preferred stock, without par value, of Cities Service Power & Light Company; and wherein and whereby Cities Service Company conferred upon said Trustee, as pledgee aforesaid, the right to exercise at all times during the life of said indenture and whether before or after default, the full voting power for all purposes of all of said common and said 121,854 shares of preferred stock of Cities Service Power & Light Company; and wherein and whereby Cities Service Company conferred upon said Trustee the right to collect and receive any and all dividends, including liquidating dividends, on, as well as the proceeds of any sale of, such common stock and such undivided 10% interest in the preferred stock of Cities Service Power & Light Company."

EXHIBIT NO. 142

3. Common Officers or Directors with Certain Other Companies

Name	No.	Position	Other Companies	Position	Sources
George MacDonald***	10	Director	Consolidated Oil Corporation	Director	P.R.D. 1940, p. 7291, and Consolidated Oil Corp. 1939 Ann. Report to S.E.C. Form 10-K S.E.C. File No. 1-1247-2
			Petroleum Corp. of America	Director	Petroleum Corp. of America 1939 Annual Report to S.E.C. Form 10-K. S.E.C. File No. 1-2043-2

***George MacDonald was one of the proxies voting for the common stockholders of Cities Service Company at the annual meeting held April 30, 1940. Source: S.E.C. Proxy File No. 11-732-1.

Clayton Gas Company.

1. Persons Holding Stock

Name	Percentage	Date	Source
Southwestern Development Company	100%	12/31/39	S.E.C. File No. 30-6-2 Southwestern Development Company Annual Supplement 1939 Form U58 Exhibit A, page 31. Also from records of Southwestern Development Company.

EXHIBIT NO. 142
10

Colorado Fuel & Iron Company

1. Persons Holding Stock

Name	Percentage	Date	Source
Rockefeller Interests*			
This control is as follows:			
John D. Rockefeller, Jr., Midtown Development & Investment Co. (a N. J. corporation)	100%		
Rockefeller Center, Inc. (a New York corporation)	100%		
Colorado Fuel & Iron Co.	49.17%		
As of June 30, 1939, John D. Rockefeller, Jr., held 1.27% of the common stock, personally, making a total held by the Rockefeller interests.	50.38%	12/31/39	Colorado Fuel & Iron Co. SEC file 1-2743-2 Form 10-K Annual Report for 1939, Item 1-B, p. 1.

*Bertram Cutler is "with" John D. Rockefeller and is a director of Colorado Fuel & Iron Company.

Source: P.R.D. 1940, page 1562, also

EXHIBIT NO. 142
11

Colorado Interstate Gas Company*

1. Persons Holding Stock

Name	Percentage	Date	Source
Common Stock			
Standard Oil Company (New Jersey)	42.5%	12/31/39	Colorado Interstate Gas Co. records
Southwestern Development Company	42.5%	"	" " " "
Public Service Company of Colorado	15 %	"	" " " "
Preferred Stock			
Standard Oil Company (New Jersey)	50 %	"	" " " "
Consolidated Oil Corporation	50 %	"	" " " "

2. Securities Held in Other Companies

Canadian River Gas Company	100% of Bonds	12/31/39	" " " "

*The Board of Directors of Colorado Interstate Gas Co. consisted of 7 members, 3 of whom represented the Southwestern Development Co. and the other 4 represented stockholders of the Colorado Interstate Gas Company. Source: Cons. Oil Corp. SEC file 1-1247-2, Form 10-K, page 62, Annual Report for 1939.

3. Common Officers or Directors with Certain Other Companies

Name	No.	Position	Other Companies	Position	Source
P. C. Spencer*	1	Director	Canadian River Gas Company	Vice President and Director	P.R.D. 1940, page 2897 Also Southwestern Development Company 1939 Annual Supplement to Registration Statement to SEC Form U5 S SEC File 30-6-2
			Southwestern Development Company	Vice President and Director	Ditto
			West Texas Gas Company	Vice President and Director	Ditto
			Amarillo Oil Company	Vice President	Ditto
			Parcomis Oil & Gas Company	President and Director	Parcomis Oil & Gas Company records
			Natural Gas Pipeline Company of America	Director	Natural Gas Pipeline Company report of 12/31/39 to F.P.C. Form No. 133
			Texoma Natural Gas Company	Director	Texoma Natural Gas Company report of 12/31/39 to F.P.C. Form No. 133

*P. C. Spencer is also an employee of Consolidated Oil Corporation. Source—Testimony in hearing of October 11, 1940 before Securities and Exchange Commission in re: Southwestern Development Company per official report on

Colorado-Wyoming Gas Company

1. Persons Holding Stock

Name	Percentage	Date	Source
Public Service Co. of Colorado	100%	12-31-39	Cities Service Power & Light Co. 1939 Annual Supplement to Registration Statement to S.E.C., Form U-5 S. Item 15. S.E.C. File No. 30-108-2-1. also Colorado-Wyoming Gas Company 12-31-1939 Report to F.P.C. Form No. 133.

EXHIBIT NO. 142
14

Commonwealth Edison Company

2. Stock Held in Other Companies

Name	Percentage	Date	Source
Public Service Company of Northern Illinois	99.64%	12/31/39	Commonwealth Edison Co. SEC file 1-18-39-2-3 Form 10-K, annual report for 1939, also Public Service Co. of No. Ill. SEC file 1-3070-2, Form 10-K, annual report for 1939.
Natural Gas Investment Co.*	3.815%	12/31/39	Chicago District Pipeline Co. Report of 12/31/39 to F.P.C. Form No. 133. Exhibit No. 1

Henry L. Doherty Interests*

2. Stock Held in Other Companies

Name	Percentage	Date	Source
Cities Service Company			
This stock is held as follows:			
G. Gordon Brownell, 75 Montgomery St., Jersey City, N. J.	151,789.2		
Henry L. Doherty, 75 Montgomery St., Jersey City, N. J.	22,655.8		
Gas & Electric Securities Co., 75 Montgomery St., Jersey City, N. J.	18,000		
Nela Alpha Anticipation Co., 75 Montgomery St., Jersey City, N. J.	15,546.4		
Cities Service Securities Co., 19-21 Dover Green, Dover, Del.	5,889.		
First Doherty Organization Ant. Co. 75 Montgomery St., Jersey City, N. J.	2,101.4		Hearings before the Temporary National Economic Committee, Congress of the U. S., 76th Cong. 2nd Sess., pursuant to Public Resolution No. 113, 75th Cong.
First Doherty Organization Inv. Co. 75 Montgomery St., Jersey City, N. J.	1,848.4		
Total	217,830.2	5.88%	12/31/1938 Appendix 3, pp. 8005-6.

*In Poor's Register of Directors for 1940, p. 1624, Henry L. Doherty (now deceased) is listed as President and Director of all of the companies listed above, including Cities Service Company and Cities Service Power and Light Co. It is disclosed in the returns filed by the Cities Service Co. and the Hearings before the Temporary National Economic Committee as of March 15, 1938, that G. Gordon Brownell held stock as nominee for H. L. Doherty and Henry L. Doherty & Company.

Additional information as to Henry L. Doherty interests is contained in a letter dated February 10, 1940, copy of which is as follows:

EXHIBIT NO. 142
15

EXHIBIT NO. 142
16

Natural Gas Pipeline of America

1. Persons Holding Stock*

Name	Percentage	Date	Source
Cities Service Company	26.63%	12/31/1939	Natural Gas Pipeline Company of America, 12/31/1939 report to F. P. C. Form No. 133
Natural Gas Investment Company**	26.63%	"	"
Standard Oil Company (New Jersey)	13.31%	"	"
Southwestern Development Company	13.31%	"	"
The Texas Corporation	17.58%	"	"

*Columbian Carbon Company, not shown on Corporate Relationship Chart, is the only other stockholder as of December 31, 1939, and held 2.53% of Natural Gas Pipeline Company of America stock.

**Natural Gas Investment Company. The following statement is found in Standard Corporation Records, Index, page 25, under Peoples Gas Light & Coke Co., and on page 9531 under Natural Gas Investment Company:

"Interest liquidated by Peoples Gas Light & Coke Co. April 11, 1940, it was announced that Peoples Gas Light & Coke Company had liquidated its 80% interest in Natural Gas Investment Company. Peoples Gas Subsidiary Corporation now owned directly 80% of the voting securities of Chicago District Pipeline Company and 21.3% of the Natural Gas Pipeline Company of America and Texoma Natural Gas Company."

According to Southwestern Development Company's application for exemption to S.E.C. (File No. 70-146-1) Form U-1, page 3, August 26, 1940, the aforesaid 26.63% of the common stock of Natural Gas Pipeline Company of America was held as follows:

By—Commonwealth Edison Company	1.015898%
Peoples Gas Subsidiary Corporation	21.303224%
Public Service Company of Northern Illinois	4.309909%

EXHIBIT NO. 142
17

3. Common Officers or Directors with Certain Other Companies.

Name	No.	Position	Other Companies	Position	Sources
P. C. Spencer***	1	Director	Southwestern Development Company	Vice President and Director	P. R. D. 1940, p. 2897 and Southwestern Development Company, 1939 Annual Supplement to Registration Statement to S.E.C. Form U-5 S S.E.C. File No. 30-6-2.
			Canadian River Gas Company	"	"
			West Texas Gas Company	"	"
			Amarillo Oil Co.	Vice President	"
			Colorado Interstate Gas Co.	Director	Colorado Interstate Gas Company records.
			Parcomis Oil & Gas Company	President and Director	Parcomis Oil & Gas Company records.
			Texoma Natural Gas Company	Director	Texoma Natural Gas Company 12/31/1939 Report to F.P.C. Form No. 133.

***P. C. Spencer is also an employee of Consolidated Oil Corp.

Source:
Official Report on Proceedings before the Securities & Exchange Commission on Oct. 11, 1940, in re: Southwestern Development Company.
S.E.C. File No. 70-146-1, page 7.

Texoma Natural Gas Company

1. Persons Holding Stock*

Name	Percentage	Date	Source
Cities Service Company	26.63%	12/31/1939	Texoma Natural Gas Company, 12/31/39 Report to F.P.C. Form No. 133.
Natural Gas Investment Co.**	26.63%	"	"
Southwestern Development Co.	26.63%	"	"
The Texas Corporation	17.58%	"	"

*Columbian Carbon Company not shown on Corporate Relationship chart is the only other stockholder as of December 31, 1939, and held 2.53 of Texoma Natural Gas Company stock.

**Re: Natural Gas Investment Company.

The following statement is found in Standard Corporation Records, Index, page 25, under People Gas Light & Coke Co., and on page 9531 under Natural Gas Investment Company:

"Interest liquidated by Peoples Gas Light & Coke Co.

April 11, 1940, it was announced that Peoples Gas Light & Coke Company had liquidated its 80% interest in Natural Gas Investment Company. Peoples Gas Subsidiary Corporation now owned directly 80% of the voting securities of Chicago District Pipeline Company and 21.3% of the Natural Gas Pipeline Company of America and Texoma Natural Gas Company."

3. Common Officers or Directors with Certain Other Companies

Name	No.	Position	Other Companies	Position	Source
P. C. Spencer***	1	Director	Southwestern Development Co.	Vice President and Director	P.R.D. 1940, p. 2897, and Southwestern Dev. Co., 1939 Ann. Supp. to Registration Statement to S.E.C.—Form U-5 S. S.E.C File No. 30-6-2.
			Canadian River Gas Company	"	"
			West Texas Gas Company	"	"
			Amarillo Oil Co.	Vice President	"
			Colorado Interstate Gas Co.	Director	Colorado Interstate Gas Company Records
			Parcomis Oil & Gas Company	President and Director	Parcomis Oil & Gas Company Records
			Natural Gas Pipeline Co., of America	Director	Natural Gas Pipeline Co. of America, 12-31-1939 Report to F.P.C. Form No. 133.

***P. C. Spencer is also an employee of Consolidated Oil Corporation.

Source: Official Report on Proceedings before the Securities and Exchange Commission on Oct. 11, 1940, in re: Southwestern Development Company. S.E.C. File No. 70-146-1, page 7.

Docket G-121

SUMMARY OF COMMON OFFICERS AND DIRECTORS DURING THE YEARS 1927 AND 1928, BETWEEN CANADIAN RIVER GAS COMPANY, COLORADO INTERSTATE GAS CO AND CERTAIN OTHER COMPANIES SHOWN ON THE CORPORATE CHART.

Name of Officers and Directors	Canadian River Gas Company	Colorado Interstate Gas Company	Colo.-Wyoming Gas Company	Amarillo Oil Company	Southwestern Development Company	Amarillo Gas Company	Clayton Gas Company	Hilbert Gas Company	Panhandle Pipe Line Company	West Texas Gas Company	The Mission Oil Company
W. S. Fitzpatrick	Pres. & Dir.	Chrm. of Bd.	-	-	Director	-	-	-	-	-	-
S. K. Moody	Director	(1) Director	-	Pres. & Dir.	Pres. & Dir.	-	-	-	-	(2) Pres. & Dir.	-
A. R. Jones	V.P. & Dir.	V.P. & Dir.	-	V.P. & Dir.	V.P. & Dir.	-	-	-	-	-	Chrm. of Bd.
J. M. Parker	Director	-	-	-	Director	Director	-	-	-	-	V.P. & Dir.
R. W. Gallagher	Director	V.P. & Dir.	-	-	-	-	-	-	-	-	-
W. V. Hickman	Treasurer	-	-	-	Asst. Off.	-	-	-	-	-	-
W. A. Jones (W. Alton Jones)	-	(3) Director	-	-	-	-	-	-	-	-	-
Christy Payne	-	Pres. & Dir.	-	-	-	-	-	-	-	-	-
E. L. Doherty	-	-	Pres. & Dir.	-	-	-	-	-	-	-	-
F. R. Coates (Frank R. Coates)	-	-	V.P. & Dir.	-	-	-	-	-	-	-	-
E. K. McWhiney	-	-	Asst. Off.	-	-	-	-	-	-	-	-
C. B. Wedum	-	-	Asst. Off.	-	-	-	-	-	-	-	-
L. F. Musil	-	-	Treasurer	-	-	-	-	-	-	-	-
T. A. Wallace (Thomas A. Wallace)	-	-	Asst. Off.	-	-	-	-	-	-	-	-
Dana H. Kelsey	-	-	-	Director	Director	-	-	-	-	-	-
E. W. Goebel	-	-	-	Director	-	-	-	-	-	-	(7) Asst.Off.Dir.
A. B. Hoskins	-	-	-	Sec. & Treas.	Sec. & Treas.	-	-	-	-	(8) Sec. & Treas.	-
Frank E. Jones	-	-	-	-	Director	-	-	-	Pres. & Dir.	-	Pres. & Dir.
Harry M. Brown (H. M. Brown)	-	-	-	-	-	V.P. & Dir.	-	(9) Director	Asst. Off.	-	-
M. F. Iliff	-	-	-	-	-	(10) Director	-	-	-	-	(11) Asst. Off.
Wayne V. Jones	-	-	-	-	-	(12) Director	-	-	-	(13) Director	(14) Asst. Off.
V. A. Hays	-	-	-	-	-	-	Pres. & Dir.	-	-	(15) Director	-
E. A. Meyer	-	-	-	-	-	-	V.P. & Dir.	(16) V.P.& Dir.	V.P. & Dir.	-	-
E. A. Nickels	-	-	-	-	-	-	Sec.Treas.Dir. Manager	(7) Treas.Sec.Dir. Manager	-	-	-
C. W. Smith	-	-	-	-	-	-	-	(18) Director	-	(19) V.P. & Dir.	-
R. F. Hinchey	-	-	-	-	-	-	-	-	Director	-	(20) Sec. & Dir.
R. M. Jones	-	-	-	-	-	-	-	-	-	(21) Director	(22) Secretary
E. A. Taylor	-	-	-	-	-	-	-	-	-	-	-
C. T. White	-	-	-	-	-	-	-	-	-	-	-
Thomas I. Carter	-	-	-	-	-	-	-	-	-	-	-
Warren W. Foster	-	-	-	-	-	-	-	-	-	-	-
Ernest H. Johnston	-	-	-	-	-	-	-	-	-	-	-
Paul R. Jones	-	-	-	-	-	-	-	-	-	-	-
John M. McMillin	-	-	-	-	-	-	-	-	-	-	-
Chas. A. Fruesuff	-	-	-	-	-	-	-	-	-	-	-
E. W. Rollins	-	-	-	-	-	-	-	-	-	-	-
Clare H. Stannard	-	-	-	-	-	-	-	-	-	-	-

Note: (1) From 6/5/26
(2) " 5/28/27
(3) " 9/27/28
(4) From 6/15/27
(5) " 11/20/28
(6) " 6/1/27
(7) Asst. Off. to 3/8/27
(8) From 5/31/27
(9) To 3/9/28
(10) To 5/10/27
(11) To 3/8/27
(12) From 5/10/27
(13) From 5/31/27
(14) " 3/8/27
(15) " 5/28/27
(16) From 3/9/28
(17) " 3/9/28
(18) To 3/9/28
(19) Director from 5/28/27
(20) V.P. from 3/9/28
(21) Secretary to 3/8/27

EXHIBIT 143 (3) 13438

AND DIRECTORS DURING THE YEARS 1927 AND 1928, BETWEEN CANADIAN RIVER GAS COMPANY, COLORADO INTERSTATE GAS COMPANY, COLORADO-WYOMING GAS COMPANY
AND
CERTAIN OTHER COMPANIES SHOWN ON THE CORPORATE CHART

n	Amarillo Gas Company	Clayton Gas Company	Dalhart Gas Company	Panhandle Pipe Line Company	West Texas Gas Company	The Mission Oil Company	Standard Oil Company (New Jersey)	Standard Oil Company of New Jersey	Sinclair Consolidated Oil Corporation	Cities Service Company	Cities Service Power & Light Company	Public Service Co. of Colorado	Pueblo Gas and Fuel Company
	-	-	-	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	(2) Pres. & Dir.	-	-	-	-	-	-	-	-
	-	-	-	-	-	Chrm. of Bd.	-	-	-	-	-	-	-
	Director	-	-	-	-	V.P. & Dir.	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	(4) V.P. & Dir.	V.P. & Dir.	(5) V.P. & Dir.	-
	-	-	-	-	-	-	(6) Director	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	Pres. & Dir.	Pres. & Dir.	Pres. & Dir.	Pres. & Dir.
	-	-	-	-	-	-	-	-	-	Director	V.P. & Dir.	-	-
	-	-	-	-	-	-	-	-	-	Asst. Off.	Asst. Off.	Asst. Off.	-
	-	-	-	-	-	-	-	-	-	Asst. Off.	Asst. Off.	Asst. Off.	-
	-	-	-	-	-	-	-	-	-	Treas. & Dir.	V.P. & Dir.	-	-
	-	-	-	-	-	-	-	-	-	Asst. Off.	Asst. Off.	Asst. Off.	-
	-	-	-	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	(7) Asst.Off.Dir.	-	-	-	-	-	-	-
s.	-	-	-	-	(8) Sec. & Treas.	-	-	-	-	-	-	-	-
	-	-	-	Pres. & Dir.	-	Pres. & Dir.	-	-	-	-	-	-	-
	V.P. & Dir.	-	(9) Director	Asst. Off.	-	-	-	-	-	-	-	-	-
	(10) Director	-	-	-	-	(11) Asst. Off.	-	-	-	-	-	-	-
	(12) Director	-	-	-	(13) Director	(14) Asst. Off.	-	-	-	-	-	-	-
	-	Pres. & Dir.	Pres. & Dir.	-	(15) Director	-	-	-	-	-	-	-	-
	-	V.P. & Dir.	(16) V.P.& Dir.	V.P. & Dir.	-	-	-	-	-	-	-	-	-
	-	Sec.Treas.Dir.	(7) Treas.Sec.Dir.	-	-	-	-	-	-	-	-	-	-
	-	Manager	Manager	-	-	-	-	-	-	-	-	-	-
	-	-	(18) Director	-	(19) V.P. & Dir.	-	-	-	-	-	-	-	-
	-	-	-	Director	-	(20) Sec. & Dir.	-	-	-	-	-	-	-
	-	-	-	-	(21) Director	(22) Secretary	-	-	-	-	-	-	-
	-	-	-	-	-	-	Secretary	Secretary	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	V.P. & Dir.	V.P. & Dir.	V.P. & Dir.	V.P. & Dir.
	-	-	-	-	-	-	-	-	-	Director	Director	-	-
	-	-	-	-	-	-	-	-	-	V.P. & Dir.	Treas. & Dir.	-	-
	-	-	-	-	-	-	-	-	-	Sec. & Dir.	Sec. & Dir.	-	-
	-	-	-	-	-	-	-	-	-	Director	V.P. & Dir.	-	-
	-	-	-	-	-	-	-	-	-	Director	Director	-	-
	-	-	-	-	-	-	-	-	-	Director	-	Director	-
	-	-	-	-	-	-	-	-	-	-	-	V.P. & Dir.	Director

0) To 5/10/27
1) To 3/8/27
2) From 5/10/27

(13) From 5/31/27
(14) " 3/8/27
(15) " 5/28/27

(16) From 3/9/28
(17) " 3/9/28
(18) To 3/9/28

(19) Director from 5/28/27
(19) V.P. from 3/9/28
(20) Secretary to 3/8/27

(21) From 5/28/27
(22) " 3/8/27

Docket G-124

SUMMARY OF COMMON OFFICERS AND DIRECTORS DURING THE YEAR 1931, BETWEEN CANADIAN RIVER GAS COMPANY, COLORADO INTERSTATE GAS COM
AND
CERTAIN OTHER COMPANIES SHOWN ON THE CORPORATE CHART

Names of Officers and Directors	Canadian River Gas Company	Colorado Interstate Gas Company	Colo.-Wyoming Gas Company	Amarillo Oil Company	Southwestern Development Company	Amarillo Gas Company	Clayton Gas Company	Dalhart Gas Company	Panhandle Pipe Line Company	Red River Gas Company	West Texas Gas Company
W. B. Fitzpatrick	Pres. & Dir.	Chrm. of Bd.	-	-	Director	-	-	-	-	-	-
[illegible] Moody	V.P. & Dir.	Director	-	Pres. & Dir.	Pres. & Dir.	-	-	-	-	-	(1) Pres. & Dir.
A. R. Jones (Albert R. Jones)	V.P. & Dir.	V.P. & Dir.	-	-	V.P. & Dir.	-	-	-	-	-	(4) Pres. & Dir.
Frank E. Jones (F. E. Jones)	Director	-	-	-	Director	(6) V.P. & Dir.	-	-	(7) V.P. & Dir.	-	-
R. W. Gallagher (Ralph Gallagher)	Director	V.P. & Dir.	-	-	-	-	-	-	-	-	-
W. [illegible] Heckman	Treasurer	-	-	-	Asst. Off.	-	-	-	-	-	-
Victor Iobe	Secretary	-	-	-	-	-	-	-	-	-	(9) Director
A. W. Heinemann	Asst. Off.	-	-	Secretary	-	Secretary	Secretary	Secretary	Secretary	Secretary	Secretary
W. A. Jones (W. Alton Jones)	-	Director	(10) V.P. & Dir.	-	-	-	-	-	-	-	-
Christy Payne	-	Pres. & Dir.	-	-	-	-	-	-	-	-	-
[illegible] Castex	-	-	Director	-	-	-	-	-	-	-	-
F. R. Coates (Frank R. Coates)	-	-	V.P. & Dir.	-	-	-	-	-	-	-	-
[illegible] Dohrs	-	-	Pres. & Dir.	-	-	-	-	-	-	-	-
[illegible] McWhiney (Edgar E. McWhiney)	-	-	Asst. Off.	-	-	-	-	-	-	-	-
C. B. Wedum (Charles B. Wedum)	-	-	Asst. Off.	-	-	-	-	-	-	-	-
L. [illegible] Musil (Louis F. Musil)	-	-	Treasurer	-	-	-	-	-	-	-	-
T. A. Wallace (Thomas A. Wallace	-	-	Asst. Off.	-	-	-	-	-	-	-	-
Dana H. Kelsey	-	-	-	V.P. & Dir.	Director	-	-	-	-	-	-
E. W. Goebel	-	-	-	(11) V.P. & Dir.	Director	-	-	-	-	-	-
R. A. Ford	-	-	-	(12) V.P.	-	-	-	-	(13) V.P.	(14) V.P.	-
R. E. Wertz	-	-	-	(15) V.P.	(16) V.P.	(17) Pres. & Dir.	-	-	(18) Pres. & Dir.	(19) Pres. & Dir.	-
O. C. Holmgren	-	-	-	Treasurer	-	Treasurer	Treasurer	Treasurer	Treasurer	Treasurer	Treasurer
J. E. Ausbury	-	-	-	(20) Asst. Off.	-	-	-	-	-	(21) Asst. Off.	-
George [illegible]	-	-	-	(22) Asst. Off.	-	-	(22A) Pres. & Dir.	(23) Pres. & Dir.	-	(24) V.P. & Dir.	(25) V.P. & Dir.
John [illegible]	-	-	-	-	Asst. Off. & Dir.	(26) V.P. & Dir.	-	-	(27) V.P. & Dir.	-	(2[illegible]) Director
V. A. Kaye	-	-	-	-	(29) Gen. Mgr.	-	(30) Pres. & Dir.	(31) Pres. & Dir.	-	-	(32) V.P. & Dir.
Horace C. Fitzpatrick	-	-	-	-	-	(33) Director	-	-	-	(34) Pres. & Dir.	-
H. M. Brown	-	-	-	-	-	(35) V.P.	-	-	(36) V.P. & Asst. Off.	-	-
H. A. [illegible]	-	-	-	-	-	-	V.P. & Dir.	V.P. & Dir.	(37) Director	-	-
E. [illegible] Sickels	-	-	-	-	-	-	(38) Dir. & Asst. Off.	Dir. & Asst. Off.	-	(39) Director	-
[illegible]	-	-	-	-	-	-	Manager	Asst. Off.	-	-	-
Louis [illegible]	-	-	-	-	-	-	Asst. Off.	Asst. Off.	-	-	-
Wa[illegible]	-	-	-	-	-	-	(40) Asst. Off.	(41) Asst. Off.	-	-	-

EXHIBIT 143 (4)

MON OFFICERS AND DIRECTORS DURING THE YEAR 1931, BETWEEN CANADIAN RIVER GAS COMPANY, COLORADO INTERSTATE GAS COMPANY, COLORADO-WYOMING GAS COMPANY AND CERTAIN OTHER COMPANIES SHOWN ON THE CORPORATE CHART

Amarillo Gas Company	Clayton Gas Company	Dalhart Gas Company	Panhandle Pipe Line Company	Red River Gas Company	West Texas Gas Company	Natural Gas Pipeline Co. of America	Texoma Natural Gas Company	The Mission Oil Company	Standard Oil Company (New Jersey)	Sinclair Consolidated Oil Corporation	Cities Service Company	Cities Service Power & Light Company	Public Service Co. of Colorado	Public Service Fuel Company
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	(1) Pres. & Dir.	(2) Director	(3) Director	-	-	-	-	-	-	-
-	-	-	-	-	(4) Pres. & Dir.	-	(5) Director	Chrm. & Dir.	-	-	-	-	-	-
(6) V.P. & Dir.	-	-	(7) V.P. & Dir.	-	-	-	-	Pres. & Dir.	-	-	-	-	-	-
-	-	-	-	-	-	(8) Director	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	(9) Director	-	-	-	-	-	-	-	-	-
Secretary	Secretary	Secretary	Secretary	Secretary	Secretary	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	V.P. & Dir.	V. P. & Dir.	V.P. & Dir.	-
-	-	-	-	-	-	V.P. & Dir.	-	-	Director	-	-	-	-	-
-	-	-	-	-	-	Pres. & Dir.	Pres. & Dir.	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	Director	V.P. & Dir.	-	-
-	-	-	-	-	-	-	-	-	-	-	Pres. & Dir.	Pres. & Dir.	Pres. & Dir.	Pres. &
-	-	-	-	-	-	Asst. Off.	Asst. Off.	-	-	-	Asst. Off.	Asst. Off.	Asst. Off.	-
-	-	-	-	-	-	Asst. Off.	Asst. Off.	-	-	-	Asst. Off.	Asst. Off.	Asst. Off.	-
-	-	-	-	-	-	-	Asst. Off.	-	-	-	Asst. Off.	Asst. Off.	Asst. Off.	-
-	-	-	-	-	-	-	-	-	-	-	Treasurer	V.P. & Dir.	-	-
-	-	-	-	-	-	-	-	-	-	-	Asst. Off.	Asst. Off.	Asst. Off.	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	V.P. & Dir.	-	-	-	-	-	-
(17) Pres. & Dir. Treasurer	-	-	(13) V.P. (18) Pres. & Dir. Treasurer	(14) V.P. (19) Pres. & Dir. Treasurer	-	-	-	-	-	-	-	-	-	-
-	-	-	-	(21) Asst. Off.	-	-	-	-	-	-	-	-	-	-
-	(22A) Pres. & Dir.	(23) Pres. & Dir.	-	(24) V.P. & Dir.	(25) V.P. & Dir.	-	-	-	-	-	-	-	-	-
(26) V.P. & Dir.	-	-	(27) V.P. & Dir.	-	(28) Director	-	-	-	-	-	-	-	-	-
-	(30) Pres. & Dir.	(31) Pres. & Dir.	-	-	(32) V.P. & Dir.	-	-	-	-	-	-	-	-	-
(33) Director	-	-	-	(34) Pres. & Dir.	-	-	-	-	-	-	-	-	-	-
(35) V.P.	-	-	(36) V.P. & Asst. Off.	-	-	-	-	-	-	-	-	-	-	-
-	V.P. & Dir.	V.P. & Dir.	(37) Director	-	-	-	-	-	-	-	-	-	-	-
-	(38) Dir. & Asst. Off.	Dir. & Asst. Off.	-	(39) Director	-	-	-	-	-	-	-	-	-	-
-	Manager	Asst. Off.	-	-	-	-	-	-	-	-	-	-	-	-
-	Asst. Off.	Asst. Off.	-	-	-	-	-	-	-	-	-	-	-	-
-	(40) Asst. Off.	(41) Asst. Off.	-	-	-	-	-	-	-	-	-	-	-	-

Docket G-124

SUMMARY OF COMMON OFFICERS AND DIRECTORS DURING THE YEAR 1931, BETWEEN CANADIAN RIVER GAS COMPANY, COLORADO INTERSTATE GAS COMPANY, AND CERTAIN OTHER COMPANIES SHOWN ON THE CORPORATE CHART

Names of Officers and Directors	Canadian River Gas Company	Colorado Interstate Gas Company	Colo-Wyoming Gas Company	Amarillo Oil Company	Southwestern Development Company	Amarillo Gas Company	Clayton Gas Company	Dallart Gas Company	Panhandle Pipe Line Company	Red River Gas Company	West Texas Gas Company
P. C. Spencer	-	-	-	-	-	-	-	-	(42) Director	-	(43) Director
E. A. Taylor	-	-	-	-	-	-	-	-	-	-	(44) Director
C. B. Ames	-	-	-	-	-	-	-	-	-	-	-
E. L. Carr	-	-	-	-	-	-	-	-	-	-	-
George F. Mitchell	-	-	-	-	-	-	-	-	-	-	-
William G. Rudd (W. G. Rudd)	-	-	-	-	-	-	-	-	-	-	-
C. A. Fruesuff (Chas. A. Fruesuff)	-	-	-	-	-	-	-	-	-	-	-
F. C. Brown	-	-	-	-	-	-	-	-	-	-	-
C. C. Kelly	-	-	-	-	-	-	-	-	-	-	-
S. B. Campbell	-	-	-	-	-	-	-	-	-	-	-
E. H. Johnston (Ernest H. Johnston)	-	-	-	-	-	-	-	-	-	-	-
F. K. MacDonald	-	-	-	-	-	-	-	-	-	-	-
George MacDonald	-	-	-	-	-	-	-	-	-	-	-
Thomas I. Carter (T. I. Carter)	-	-	-	-	-	-	-	-	-	-	-
Warren W. Foster	-	-	-	-	-	-	-	-	-	-	-
Paul R. Jones	-	-	-	-	-	-	-	-	-	-	-
John M. McMillin	-	-	-	-	-	-	-	-	-	-	-
Clare M. Stannard (C. M. Stannard)	-	-	-	-	-	-	-	-	-	-	-
J. E. Loiseau	-	-	-	-	-	-	-	-	-	-	-

Notes:
(1) To March 1931
(2) From 12/30/31
(3) " 12/30/31
(4) " March 1931
(5) " 12/30/31
(6) " March 1931
(7) Also President to 3/14/31 and V.P. from 3/14/31
(8) To 12/30/31
(9) To 3/3/31
(10) From 4/1/31
(11) V.P. from 3/3/31 Dir. from 4/13/31
(12) From 3/3/31
(13) " 2/25/31 to 3/14/31
(14) " 3/3/31
(15) " 11/1/31
(16) " 7/1/31 to 11/7/31
(17) Dir. from 3/3/31 Pres. from 3/4/31
(18) Pres. from 3/14/31
(19) To 3/3/31
(20) From 3/3/31
(21) " 3/3/31
(22) " 11/1/31
(22A) " 7/1/31
(23) " 7/1/31
(24) To 3/3/31
(25) V.P. from 3/14/31 Dir. from 3/3/31 to 7/1/31
(26) From 3/3/31
(27) Dir. from 3/3/31 V.P. from 3/14/31
(28) To 3/3/31
(29) " 7/1/31
(30) " 7/1/31
(31) " 7/1/31
(32) V.P. from 3/14/31 to 7/1/31 Dir. from 3/3/31 to 7/1/31
(33) To 3/3/31
(34) From 3/3/31
(35) To 7/1/31
(36) V.P. from 3/14/31 to 7/1/31
(37) To 3/3/31
(38) Asst. Off. to 7/1/31
(39) From 3/3/31
(40) " 7/1/31
(41) " 7/1/31
(42) To 3/3/31
(43) From 7/1/31
(44) To 3/3/31

13440

EXHIBIT 143 (5)

COMMON OFFICERS AND DIRECTORS DURING THE YEAR 1931, BETWEEN CANADIAN RIVER GAS COMPANY, COLORADO INTERSTATE GAS COMPANY, COLORADO-WYOMING GAS COMPANY AND CERTAIN OTHER COMPANIES SHOWN ON THE CORPORATE CHART

rm t	Amarillo Gas Company	Clayton Gas Company	Dalhart Gas Company	Panhandle Pipe Line Company	Red River Gas Company	West Texas Gas Company	Natural Gas Pipeline Co. of America	Texoma Natural Gas Company	The Ohio Oil Company	Standard Oil Company (New Jersey)	Sinclair Consolidated Oil Corporation	Cities Service Company	Cities Service Power & Light Company	Public Service Co. of Colorado	Public Gas and Fuel Company
	-	-	-	(42) Director	-	(43) Director	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	(44) Director	-	-	Secretary	-	-	-	-	-	-
	-	-	-	-	-	-	V.P. & Dir.	V.P. & Dir.	-	-	-	-	-	-	-
	-	-	-	-	-	-	Director	Director	-	-	-	-	-	-	-
	-	-	-	-	-	-	Director	Director	-	-	-	-	-	-	-
	-	-	-	-	-	-	V.P. & Dir.	V.P. & Dir.	-	-	-	-	-	-	-
	-	-	-	-	-	-	Director	Director	-	-	-	Director	Director	-	-
	-	-	-	-	-	-	V.P.	V.P.	-	-	-	-	-	-	-
	-	-	-	-	-	-	Secretary	Secretary	-	-	-	-	-	-	-
	-	-	-	-	-	-	Asst. Off.	Asst. Off.	-	-	-	-	-	-	-
	-	-	-	-	-	-	Treasurer	Treasurer	-	-	-	V.P. & Dir.	Treas. & Dir.	-	-
	-	-	-	-	-	-	Asst. Off.	Asst. Off.	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-	Director	Director	-	-	-
	-	-	-	-	-	-	-	-	-	-	-	V.P. & Dir.	V.P. & Dir.	V.P. & Dir.	V.P. & Dir.
	-	-	-	-	-	-	-	-	-	-	-	Director	Director	-	-
	-	-	-	-	-	-	-	-	-	-	-	Sec. & Dir.	Sec. & Dir.	-	-
	-	-	-	-	-	-	-	-	-	-	-	Director	V.P. & Dir.	-	-
	-	-	-	-	-	-	-	-	-	-	-	-	-	V.P. & Dir.	Director
	-	-	-	-	-	-	-	-	-	-	-	-	-	Sec. & Dir.	Sec. & Dir.

(34) From 3/3/31
(35) To 7/1/31
(36) V.P. from 3/14/31 to 7/1/31
(37) To 3/3/31
(38) Asst. Off. to 7/1/31
(39) From 3/3/31
(40) " 7/1/31
(41) " 7/1/31
(42) To 3/3/31
(43) From 7/1/31
(44) To 3/3/31

14/31
3/31 to 7/1/31

3/31
14/31

14/31 to 7/1/31
/3/31 to 7/1/31

Docket G-12

SUMMARY OF COMMON OFFICERS AND DIRECTORS DURING THE YEAR 1959, BETWEEN CANADIAN RIVER GAS COMPANY, COLORADO INTERSTATE GAS COMP AND CERTAIN OTHER COMPANIES SHOWN ON THE CORPORATE CHART

Name of Officers and Directors	Canadian River Gas Company	Colorado Interstate Gas Company	Colo.-Wyo. Gas Company	Amarillo Oil Company	Southwestern Development Company	Amarillo Gas Company	Clayton Gas Company	Ballard Gas Company	Perennis Oil & Gas Company	Panhandle Pipe Line Company	Red River Gas Company	West Texas Gas Company	Natural Gas Pipeline Co. of America	Texoma Natural Gas Company
P. C. Spencer	V.P. & Dir.	Director	-	V.P.	V.P. & Dir.	-	-	-	Pres. & Dir.	-	-	V.P. & Dir.	Director	Director
N. K. Moody	Pres. & Dir.	Chrm. of Bd.	-	Pres. & Dir.	Pres. & Dir.	-	-	-	-	-	Pres. & Dir.	-	-	-
Albert R. Jones	V.P. & Dir.	V.P. & Dir.	-	-	V.P. & Dir.	-	Director	-	V.P. & Dir.	-	-	Pres. & Dir.	-	Director
Frank E. Jones	Director	-	-	-	Director	V.P. & Dir.	-	-	-	V.P. & Dir.	Director	-	-	-
E. A. Sickels	Asst. Off. & Dir.	-	-	V.P. & Dir.	Asst. Off. & Dir.	V.P. & Dir.	Asst. Off. & Dir.	Asst. Off. & Dir.	-	V.P. & Dir.	V.P. & Dir.	Asst. Off. & Dir.	-	-
R. E. Werts	V.P.	-	-	V.P.	-	Pres. & Dir.	Pres. & Dir.	Pres. & Dir.	-	Pres. & Dir.	-	-	-	-
George Baird	Treas. & Sec.	-	-	Treas. & Sec.	Treas. Sec. & Dir.	Treas. & Sec.	Treas. & Sec.	Treas. & Sec.	-	Treas. & Sec.	Treas. & Sec.	Treas. & Sec.	-	-
J. C. Shields	Asst. Off.	Asst. Off.	-	-	-	-	-	-	-	-	-	-	-	-
W. M. Wright	Asst. Off.	-	-	Asst. Off.	-	-	Asst. Off.	Asst. Off.	-	-	Asst. Off.	Asst. Off.	-	-
F. H. Lorch, Jr.	-	Pres. & Dir.	-	-	-	-	-	-	-	-	-	-	-	-
W. A. Daugherty	-	V.P.& Dir.	-	-	-	-	-	-	-	-	-	-	V.P. & Dir.	-
E. E. Du Vall	-	Sec. & Dir.	-	-	-	-	-	-	-	-	-	-	-	-
Chas. Fruesuff (C. A. Fruesuff)	-	Director	-	-	-	-	-	-	-	-	-	-	Director	Director
James Comerford	-	Treasurer	-	-	-	-	-	-	-	-	-	-	-	-
W. A. Jones (W. Alton Jones)	-	-	V.P. & Dir.	-	-	-	-	-	-	-	-	-	Pres. & Dir.	Pres. & Dir.
T. W. Tutwiler	-	-	Director	-	-	-	-	-	-	-	-	-	-	-
E. E. McWhinney (Edgar E. McWhinney)	-	-	Asst. Off.	-	-	-	-	-	-	-	-	-	Asst. Off.	Asst. Off.
E. E. Johnston (Ernest E. Johnston)	-	-	Treasurer	-	-	-	-	-	-	-	-	-	Treasurer	Treasurer
T. A. Wallace (Thomas A. Wallace)	-	-	Asst. Off.	-	-	-	-	-	-	-	-	-	-	-
C. W. Trapp	-	-	-	V.P. & Dir.	Director	-	-	Director	-	-	-	-	-	-
M. B. Snyder	-	-	-	Asst. Off.	-	V.P.	V.P.	V.P.	-	V.P.	V.P.	V.P.	-	-
E. E. Sudro	-	-	-	-	-	Asst. Off.	-	-	-	Asst. Off.	-	-	-	-
E. Ogarrio	-	-	-	-	-	-	-	-	-	-	-	-	V.P. & Dir.	V.P. & Dir.
F. C. Brown	-	-	-	-	-	-	-	-	-	-	-	-	V.P. & Dir.	V.P. & Dir.
E. L. Carr	-	-	-	-	-	-	-	-	-	-	-	-	Director	Director
George F. Mitchell	-	-	-	-	-	-	-	-	-	-	-	-	Director	Director
E. P. Sedwick	-	-	-	-	-	-	-	-	-	-	-	-	Director	Director
E. E. Campbell	-	-	-	-	-	-	-	-	-	-	-	-	Secretary	Secretary
C. W. Fischer	-	-	-	-	-	-	-	-	-	-	-	-	Asst. Off.	Asst. Off.
C. B. Wedum (Chas. B. Wedum)	-	-	-	-	-	-	-	-	-	-	-	-	(9) Asst. Off.	(9) Asst. Off.
F. L. MacDonald	-	-	-	-	-	-	-	-	-	-	-	-	Asst. Off.	Asst. Off.
Jay E. Crane	-	-	-	-	-	-	-	-	-	-	-	-	-	-
George MacDonald	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Thomas I. Carter	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Warren W. Foster	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Paul E. Jones	-	-	-	-	-	-	-	-	-	-	-	-	-	-
J. H. McMillan	-	-	-	-	-	-	-	-	-	-	-	-	-	-

EXHIBIT 143 (6)

ERS AND DIRECTORS DURING THE YEAR 1939, BETWEEN CANADIAN RIVER GAS COMPANY, COLORADO INTERSTATE GAS COMPANY, COLORADO-WYOMING GAS COMPANY
AND
CERTAIN OTHER COMPANIES SHOWN ON THE CORPORATE CHART

Ballard Gas Company	Forrestal Oil & Gas Company	Panhandle Pipe Line Company	Red River Gas Company	West Texas Gas Company	Natural Gas Pipeline Co. of America	Yuma Natural Gas Company	The Mission Oil Company	Standard Oil Company (New Jersey)	Standard Oil Company of New Jersey	Gas Companies Incorporated	Consolidated Oil Corporation	Cities Service Company	Cities Service Power & Light Company	Public Service Company of Colorado
-	Pres. & Dir.	-	-	V.P. & Dir.	Director	Director	-	-	-	-	-	-	-	-
-	-	-	Pres. & Dir.	-	-	-	-	-	-	-	-	-	-	-
-	V.P. & Dir.	-	-	Pres. & Dir.	-	Director	Pres. & Dir.	-	-	-	-	-	-	-
-	-	V.P. & Dir.	Director	-	-	-	Chrm. of Bd.	-	-	-	-	-	-	-
Asst. Off. & Dir.	-	V.P. & Dir.	V.P. & Dir.	Asst. Off. & Dir.	-	-	-	-	-	-	-	-	-	-
Pres. & Dir.	-	Pres. & Dir.	-	-	-	-	-	-	-	-	-	-	-	-
Treas. & Sec.	-	Treas. & Sec.	Treas. & Sec.	Treas. & Sec.	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Asst. Off.	-	-	Asst. Off.	Asst. Off.	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	Pres. & Dir.	-	-	-	-
-	-	-	-	-	V.P. & Dir.	-	-	-	-	V.P. & Dir.	-	-	-	-
-	-	-	-	-	-	-	-	-	-	Secretary	-	-	-	-
-	-	-	-	-	Director	Director	-	-	-	Treasurer	-	(1) Director	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	Pres. & Dir.	Pres. & Dir.	-	-	-	-	-	-	(2) V.P. & Dir.	(3) V.P. & Dir.
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	Asst. Off.	Asst. Off.	-	-	-	-	-	Asst. Off.	(4) Asst. Off.	(5) Asst. Off.
-	-	-	-	-	Treasurer	Treasurer	-	-	-	-	-	V.P. & Dir.	(6) Treasurer	-
-	-	-	-	-	-	-	-	-	-	-	-	Asst. Off.	(7) Asst. Off.	(8) Asst. Off.
Director	-	-	-	-	-	-	Trans. Sec. & Dir.	-	-	-	-	-	-	-
V.P.	-	V.P. Asst. Off.	V.P.	V.P.	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	V.P. & Dir.	V.P. & Dir.	-	-	-	-	-	-	-	-
-	-	-	-	-	V.P. & Dir.	V.P. & Dir.	-	-	-	-	-	-	-	-
-	-	-	-	-	Director	Director	-	-	-	-	-	-	-	-
-	-	-	-	-	Director	Director	-	-	-	-	-	-	-	-
-	-	-	-	-	Director	Director	-	-	-	-	-	-	-	-
-	-	-	-	-	Secretary	Secretary	-	-	-	-	-	-	-	-
-	-	-	-	-	Asst. Off.	Asst. Off.	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	(9) Asst. Off.	(9) Asst. Off.	-	-	-	-	-	(10) Asst. Off.	Asst. Off.	Asst. Off.
-	-	-	-	-	Asst. Off.	Asst. Off.	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	Treasurer	Treasurer	-	Director	Director	-	-
-	-	-	-	-	-	-	-	-	-	-	-	V.P. & Dir.	(11) V.P.	(12) V.P. & Dir.
-	-	-	-	-	-	-	-	-	-	-	-	Director	(13) Director	-
-	-	-	-	-	-	-	-	-	-	-	-	Sec. & Dir.	(14) Secretary	-
-	-	-	-	-	-	-	-	-	-	-	-	Director	(15) V.P. & Dir.	-

Docket G-120

SUMMARY OF COMMON OFFICERS AND DIRECTORS DURING THE YEAR 1939, BETWEEN CANADIAN RIVER GAS COMPANY, COLORADO INTERSTATE AND CERTAIN OTHER COMPANIES SHOWN ON THE CORPORATE CHART

Name of Officers and Directors	Canadian River Gas Company	Colorado Interstate Gas Company	Colo.-Wyoming Gas Company	Amarillo Oil Company	Southwestern Development Company	Amarillo Gas Company	Clayton Gas Company	Dalhart Gas Company	Parcomis Oil & Gas Company	Panhandle Pipe Line Company	Red River Gas Company	West Texas Gas Company	Natural Gas Pipeline Co. of America
George H. Shaw													
H. E. Burger													
Dale H. Carson													
J. W. Faller (Guy W. Faller)													
C. E. Yeager													

Notes:
(1) Resigned as director 7/15/39
(2) Resigned as officer & director 7/11/39
(3) do. 7/13/39
(4) Resigned as officer 7/11/39
(5) do. 7/13/39
(6) do. 7/11/39
(7) do. 7/11/39
(8) do. 7/13/39
(9) Resigned 8/9/39
(10) Resigned 6/21/39
(11) " 7/11/39
(12) Resigned as officer & director 7/13/39
(13) Resigned 7/11/39
(14) " 7/11/39
(15) Resigned as officer & director 7/11/39
(16) Resigned as director 7/13/39
(17) V.P. from 8/2/39 to 12/31/39
(18) Resigned 7/11/39

"Assistant officer" represents assistant secretary and treasurer or assistant secretary or assistant treasurer.

EXHIBIT 143 (7)

ON OFFICERS AND DIRECTORS DURING THE YEAR 1939, BETWEEN CANADIAN RIVER GAS COMPANY, COLORADO INTERSTATE GAS COMPANY, COLORADO-WYOMING GAS COMPANY
AND
CERTAIN OTHER COMPANIES SHOWN ON THE CORPORATE CHART

Clayton Gas Company	Dalhart Gas Company	Parcomis Oil & Gas Company	Panhandle Pipe Line Company	Red River Gas Company	West Texas Gas Company	Natural Gas Pipeline Co. of America	Texoma Natural Gas Company	The Mission Oil Company	Standard Oil Company (New Jersey)	Standard Oil Company of New Jersey	Gas Companies Incorporated	Consolidated Oil Corporation	Cities Service Company	Cities Service Power & Light Company	Public Service Company of Colorado
													Director	-	(16) Director
														V.P. & Dir.	(17) V.P. & Dir.
														Treas. & Dir.	V.P. & Dir.
														Director	V.P. & Dir.
															(18) Asst. Off.

tor 7/13/39

tor 7/11/39
9
9

Docket G-124

COLORADO-WYOMING GAS COMPANY
EXAMINER'S ENTRIES TO ADJUST GAS PLANT AS OF DECEMBER 31, 1939

EXHIBIT 1991

BV
rmf
10/21/40

Particulars		Debit	Credit
No. 200			
Surplus		$79.362.52	
Interest charged to Construction - Cr. - 1930	$34.394.48		
Interest charged to Construction - Cr. - 1931	32.510.00		
Interest charged to Construction - Cr. - 1932	12.458.04		
Gas Plant (Interest on Excess Capacity)			$79.362.52

To reverse amounts capitalized from March 1, 1930 to December 31, 1932 representing interest after the close of the construction period.

Computation of interest was at the rate of 6% per year on that proportion of total cost of property south of Fort Collins, Colorado estimated by the company to be in excess of that required to handle the volume of business actually done during the periods indicated.

Schedule No. 12 shows the company's method of computation of the amounts capitalized.

The company's capitalization of interest on excess capacity is unjustified, particularly in view of the return which it earned on its investment during 1930, 1931 and 1932.

	1930	1931	1932
Average gas plant, as adjusted	$1,454,493.96	$1,621,604.46	$1,646,401.15
Less, average depreciation reserve, as adjusted	59,953.63	90,942.97	123,045.84
Net plant investment	$1,394,540.33	$1,530,661.49	$1,523,355.31
Add, estimated working capital requirement*	16,234.59	16,234.59	16,234.59
	$1,410,774.92	$1,546,896.08	$1,539,589.90
Less, average contributions in aid of construction	160.80	550.35	1,123.27
	$1,410,614.12	$1,546,345.73	$1,538,466.63
Utility income, as adjusted	$ 201,710.92	$ 198,643.52	$ 180,522.32
Rate of return	14.44%	12.85%	11.73%

*Represents requirement computed by Examiner based on operations for 1939

No. 201

Surplus		$ 5.714.74	
Operation and General - 1929	$2.519.74		
Operation and General - 1930	3.195.00		
Gas Plant			$ 5.714.74
Main Line	$4.516.62		
Lateral Lines	488.11		
Compressing Stations - Arvada	710.01		

To eliminate amounts capitalized by the company representing arbitrary percentages of general expenses for 1929 and 1930. The attached schedule is a detail of the company's computation. It will be noted that the amount of $2.519.74 capitalized for the year 1929 represents an arbitrary 25% of the accounts indicated. The amount of $3.195.00 capitalized for 1930 represents various arbitrary percentages of estimated or assumed amounts for general expenses for 1930. The estimates which were used in computing the amount of $3.195.00 varied considerably from the actual amount of such expenses for 1930, as disclosed in the company's computation.

Docket G-12/4

Eq. 201 (cont'd)

COLORADO-WYOMING GAS COMPANY
EXAMINER'S RECORDS TO ADJUST GAS PLANT
AS OF DECEMBER 31, 1939

KLS
RF
ref
10/21/40

ARBITRARY PERCENTAGES OF GENERAL EXPENSES CAPITALIZED

Description (1)	Year 1939 Actual Expenses (2)	Year 1939 Percentage Capitalized (3)	Year 1939 Amount Capitalized (4)	Year 1930 (Note 2) Actual Expenses (5)	Year 1930 (Note 2) Percentage Capitalized (6)	Year 1930 (Note 2) Amount Capitalized (7)
Salary of Vice President and General Manager (Note 1)	$ 3,171.94	25%	$ 792.98	$ 2,244.58	46.8%	$1,050.00
Salaries of Secretary, Clerks and Stenographer	3,994.00	25%	998.50	5,068.33	20.1%	1,020.00
Legal Fees and Expenses	100.00	25%	25.00	4,414.85	6.8%	300.00
General Traveling Expenses	1,285.32	25%	321.33	25.85	870.4%	225.00
Office Supplies	627.72	25%	156.93	803.24	18.7%	150.00
General Office Rent	900.00	25%	225.00	2,520.00	17.9%	450.00
Totals	$10,078.98	25%	$2,519.74	$15,076.85	21.2%	$3,195.00

Notes:

(1) The total salary of the Vice President and General Manager was $4,200 per year. Portions thereof were billed to H. L. Doherty & Company for services rendered on properties other than Colorado-Wyoming Gas Company.

(2) The amount capitalized for 1930 was based upon the following estimates:

	Estimated Expenses	Percentage Capitalized	Amount Capitalized
Salary of Vice President and General Manager	$ 4,200.00	25%	$1,050.00
Salaries of Secretary, Clerks and Stenographers	4,080.00	25%	1,020.00
Legal Fees and Expenses	1,200.00	25%	300.00
General Traveling Expenses	1,500.00	15%	225.00
Office Supplies	600.00	25%	150.00
General Office Rent	1,800.00	25%	450.00
Totals	$13,380.00		$3,195.00

EXHIBIT 199
26341

Docket G-124

COLORADO-WYOMING GAS COMPANY
EXAMINER'S ENTRIES TO ADJUST GAS PLANT
AS OF DECEMBER 31, 1939 (EXHIBIT 199) 4

Particulars		Debit	Credit
	No. 202		
Gas Plant Adjustments		$83,886.65	
Reserve for Depreciation of Gas Plant in Service			$ 1,094.08
Gas Plant			82,792.57
Main Line	$54,728.74		
Lateral Lines	17,925.60		
Compressing Stations	9,945.31		
Transportation Equipment	38.95		
Office Furniture and Equipment	129.36		
Miscellaneous Tools	1.26		
Communication Equipment	23.75		

To adjust for 5% engineering fee on construction paid to H. L. Doherty and Company and Cities Service Company.

A detail of 5% engineering fees capitalized is shown in the attached schedule. The total of such fees capitalized according to the schedule, is $83,886.65. The balance in plant account as of December 31, 1939 is $82,792.57, the difference of $1,094.08 representing fees included in property retirements as recorded on the company's books.

Payments of engineering fees have been made in accordance with the provisions of a fiscal agent agreement dated September 1, 1929 between Colorado-Wyoming Gas Company and Henry L. Doherty and Company. The terms and conditions of this contract are indicated to be the same as had been in effect between the parties prior to the date of the contract. A copy of the contract is attached.

The books of account of the Colorado-Wyoming Gas Company and other data made available to the Examiner do not contain evidence that these fees represent any actual cost of the services for which the amount was paid.

It is not clear as to the engineering services actually rendered by the Doherty organization for the 5% fee. It will be noted from the contract that the Colorado-Wyoming Gas Company was required to pay, in addition to the 5% fee, reasonable per diem charges as well as expenses of representatives of the Doherty organization while engaged on work for the company. The records show that the Colorado-Wyoming Gas Company was billed for the services and expenses of C. H. Burnham and R. M. Bussard, engineers of the Doherty organization, while engaged upon construction work for Colorado-Wyoming Gas Company.

The Examiner proposes no adjustment for amounts representing services of Messrs. Burnham and Bussard capitalized in a total amount of $11,832.94 (See Schedule No. 14).

In view of the foregoing facts, the amount of the 5% engineering fees is recommended for elimination from the cost of Colorado-Wyoming Gas Company's plant in service.

Docket G-124

EXHIBIT 199

COLORADO-WYOMING GAS COMPANY
EXAMINER'S ENTRIES TO ADJUST GAS PLANT
No. 202 (cont'd) AS OF DECEMBER 31, 1939

8

FISCAL AGENT AGREEMENT WITH HENRY L. DOHERTY & COMPANY

August 1st, 1929.

"To The Board of Directors of
COLORADO-WYOMING GAS COMPANY.

Gentlemen:

The undersigned, as Fiscal Agent, hereby offers to continue to place at the service of your corporation, under the same terms and conditions as have been in effect for the past several years, a complete organization which has been built up in connection with the operation and development of public utility, oil and natural gas properties, making available to you the combined experience, advice and assistance of this organization to aid you in solving such problems as may arise in connection with the conduct of your business. Among others, it is proposed to perform for your corporation, subject to the direction and control of your Board of Directors, the following service:

I PERSONNEL

In so far as your corporation may desire, it is proposed to supply you with experienced executives and operators necessary for your business.

II EXECUTIVE SERVICE

Our staff of executives, financial advisors, engineers and accountants will advise as to operations, analyse requisitions for capital expenditures, advise and assist in franchises, rates, matters of public relations, and all matters of insurance, supervise expansion of territory and business, acquisition of additional properties, etc.

III GENERAL ACCOUNTING SERVICES

Our Accounting Department will periodically audit the books of your corporation and generally advise in accounting problems and in the developments in accounting practices and procedure, and furnish the services of certified public accountants where special audits are required.

IV STATISTICAL SERVICES

Our Statistical Department will supply comparative statements of operating results of the various companies under our supervision and will also supervise or furnish statistical reports to financial institutions, government bureaus and similar organizations.

Docket 6-124

EXHIBIT 199

COLORADO-WYOMING GAS COMPANY
EXAMINER'S REVISIONS TO ADJUST GAS PLANT
Ex. 202 (cont'd) AS OF DECEMBER 31, 1939 9

FISCAL AGENT AGREEMENT WITH HENRY L. DOHERTY & COMPANY (cont'd)

V PURCHASING SERVICES

We will give you the benefit of the services of our Purchasing Department with regard to the purchase of equipment, supplies, generally advise as to the desirable equipment, etc.

VI DESIGNING AND CONSTRUCTION ENGINEERING

Our Engineering staff will be available at all times to carry out all preliminary investigations requisite to determining the advisability of any proposed construction, will check the details of engineering design, perform engineering in connection with major construction, will supervise construction work where required, and generally check the efficiency of your plant.

VII FINANCIAL SERVICES

The Financial Department will provide plans for financing and for funds for capital requirements, including construction and additions to properties and acquisition of new properties; for the refunding of maturing obligations; will act as paying agent for coupons and dividends, and assist in the arranging of bank loans. Also the Financial Department will furnish your corporation with a budget system for the advanced determination of financial requirements and operating results.

VIII SECURITIES DEPARTMENT

The Securities Department will provide plans for the sale and distribution of various securities, and will formulate and carry out campaigns for sales under customer ownership plan, etc.

IX VALUATION

The Valuation Department will, when required, prepare inventories and appraisals of property, and will advise as to experts who may be required to testify in valuation cases, and will generally assist in the preparation of the same.

X TAX DEPARTMENT

The Tax Department will prepare or supervise the preparation of Federal and other tax returns and generally keep in touch with taxation problems.

FISCAL AGENT AGREEMENT WITH HENRY L. DOHERTY & COMPANY (cont'd)

XI NEW BUSINESS DEPARTMENT

The New Business Department will serve in the purchase and sale of appliances and equipment for re-sale, the determination of sales policies, promotion programs and sales personnel, in research and laboratory tests on domestic appliances, etc.

XII TECHNICAL AND RESEARCH DEPARTMENT

The Technical and Research Department will furnish a consulting service on all technical problems encountered by your corporation.

COMPENSATION

For the above services your corporation will pay as follows:

1. A management fee equal to one and three-quarters per cent. (1-3/4%) of its gross revenues, after deducting Inter-Company sales for resale.

2. An engineering fee equal to five per cent. (5%) of the cost of construction.

3. For the services of our Securities Department to purchase outright blocks of securities issued by your corporation or to distribute such securities to investors, we will charge a fee to be mutually agreed upon, depending on the character of security offered and general market conditions when the offer is made.

In addition, your corporation will pay the expenses, disbursements and reasonable per diem charges for our representatives while at the properties of your corporation or traveling for it on special matters.

This agreement will take effect as of September 1st, 1929, and shall continue in effect for a period of one year thereafter and shall be automatically renewed from year to year unless terminated by either party upon written notice to the other, mailed at least ninety days prior to the end of any year.

A resolution adopted by your Board of Directors, authorizing the acceptance of this offer, shall constitute acceptance thereof.

Yours very truly,

HENRY L. DOHERTY & COMPANY,

By Ernest E. Johnston."

(Accepted by Colorado-Wyoming Gas Company, effective September 1, 1929)

22550

Docket G-124 EXHIBIT 199

COLORADO-WYOMING GAS COMPANY
EXAMINER'S ENTRIES TO ADJUST GAS PLANT
AS OF DECEMBER 31, 1939

12

Particulars	Debit	Credit
No. 204		
Gas Plant Adjustments	$2,844.90	
Gas Plant (Main Line)		$2,844.90

Transfer to gas plant adjustments of amount representing cash discount realized and retained by Cities Service Company on invoices paid by it for the account of Colorado-Wyoming Gas Company in 1926.

The records of the Colorado-Wyoming Gas Company indicate that funds for the payment of certain invoices were advanced by Cities Service Company and that the charges were later transferred to the open account of Colorado-Wyoming Gas Company by Henry L. Doherty & Company. A voucher reference of the material purchases to which the above discount applies is as follows:

Date	Reference	Amount
Dec. 1, 1925	G.J. 2	$ 63,945.72
Jan. 31, 1926	T.V. 9	881.20
Feb. 28, 1926	T.V. 23	115.61
June 30, 1926	T.V. 53	116,210.67
Total		$181,153.20

Under date of September 14, 1939 the Examiner requested from the company a statement in writing:

"(1) Whether or not discounts applicable to the invoices in question were realized by Henry L. Doherty & Company or any other person or company.

"(2) Full particulars showing why the discounts in question were not realized by Colorado-Wyoming Gas Company."

The company replied by a letter dated September 29, 1939 as follows:

"With reference to your letter of the 14th inst., regarding cash discount on invoices for material purchases made in 1925 and 1926, would advise that this discount was realized by Cities Service Company.

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No. 204 (cont'd)

"Their position in the matter was that any reward for the prompt payment of bills in no way affected the price of goods covered by the invoice. Since the money was supplied by Cities Service Company, it was deemed proper that they should receive the benefits of any cash discounts."

Elimination from plant in service of an amount equivalent to the discount realized by Cities Service Company is recommended for the reason that it represents capitalization of an intercompany profit on the books of the Respondent.

BV
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10/22/40

Particulars		Debit	Credit
No. 205			
Surplus			$23,718.50
Interest charged to Construction - Cr. - 1925		$ 486.31	
Interest charged to Construction - Cr. - 1929		14,484.75	
Interest charged to Construction - Cr. - 1930		8,747.44	
Gas Plant			
Main Line		$21,211.31	
Lateral Lines		2,507.19	
			$23,718.50

To reverse entries made by the company recording capitalization of interest during construction. This entry is preparatory to Examiner's computation of revised amounts recommended for interest during construction. Reference is made to Examiner's entry No. 206.

No. 206			
Gas Plant			$14,978.74
Main Line		$9,949.85	
Lateral Lines		2,874.05	
Compressing Stations		2,154.84	
Surplus			
Interest charged to Construction - Cr. -	1925	$ 486.31	
do.	1926	2,400.81	
do.	1927	831.02	
do.	1928	5.46	
do.	1929	8,218.39	
do.	1930	2,439.48	
do.	1931	291.17	
do.	1934	1.66	
do.	1935	203.44	
do.	1936	38.99	
do.	1937	62.01	
			$14,978.74

To record interest during construction as recommended by Examiner.

Attached is a schedule showing the computation of the interest recommended for allowance as a component cost of construction. Recommended periods of construction are also shown. The amount recommended for allowance is simple interest at 6% per year, applied to the adjusted monthly construction expenditures on each job for the period of the initial expenditure to the date of operation or date ready for service.

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COLORADO-WYOMING GAS COMPANY
EXAMINER'S ENTRIES TO ADJUST GAS PLANT
AS OF DECEMBER 31, 1939

No. 206 (cont'd)

Notes:

(1) Interest recomputed on expenditures to date of service to the Great Western Sugar Company, November 30, 1929, and on additional expenditure after November 30, 1929 to date of delivery of Texas gas to Fort Collins (January 21, 1930).

(2) Interest capitalized per books and as recommended by Examiner represents actual interest paid by the company during original period of construction on its open account with Henry L. Doherty & Company.

(3) Interest computed to end of month of last substantial charge to job per books.

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Particulars	Debit	Credit
No. 214		
Gas Plant (Compressing Stations - Arvada)	$2,681.90	
Reserve for Depreciation of Gas Plant in Service	948.97	
Gas Plant (Compressing Stations - Wellington)		$3,630.87
To eliminate 5% engineering fees included in book figures used in preceding entry. This is necessary since all 5% engineering fees charged to plant account or retired by charges to depreciation reserve on Respondent's books were transferred to Gas Plant Adjustment Account by Examiner's entry No. 202.		
No. 215		
Gas Plant (Compressing Stations - Arvada)	$65,317.92	
Material and Supplies	1,800.00	
Reserve for Depreciation of Gas Plant in Service	12,405.97	
Gas Plant (Compressing Station - Wellington)		$79,523.89
To restate accounting for transfer in 1931 of equipment originally installed in 1928 under Job Order 107 from Wellington compressing station to Arvada compressing station, and retirement and salvaging of equipment and material incidental thereto.		
Total cost of Job Order 107 per company's books (exclusive of Land)	$90,569.44	
Deduct		
5% engineering fees disallowed by Examiner's entry No. 202	4,121.82	
Adjusted cost of Job Order 107	$86,447.62	
Cost of equipment and material transferred and in place at Arvada compressing station per memorandum of Bureau of Engineering	$65,317.92	
Cost of equipment and material left at Wellington compressing station and in place there per memorandum of Bureau of Engineering	6,923.73	
Salvage value placed upon material returned to stores per company's records	1,800.00	
Balance, representing material, equipment and installation costs lost or retired - charged to Reserve for Depreciation of Gas Plant in Service by this entry	12,405.97	
	$86,447.62	

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COLORADO-WYOMING GAS COMPANY
EXAMINER'S REVISION TO ADJUST GAS PLANT
No. 215 (cont'd) AS OF DECEMBER 31, 1939

25

COPY

MEMORANDUM

October 15, 1940

Subject: G-124 - Colorado-Wyoming Gas Company - Transfer of material and equipment from Wellington compressing station to Arvada compressing station in 1931.

The following data are furnished to enable the accounting staff to restate the accounting for transfer in 1931 from Wellington compressing station to Arvada compressing station material and equipment originally installed in 1928 under Job Order 107, and the retirement of material and equipment incidental thereto.

The following items originally installed under Job Order 107 were in service in the Arvada station as of December 31, 1939, having been transferred from the Wellington station in 1931:

Description	Book cost as determined from F.P.C. working papers, exclusive of 5% engineering fees
Engines, etc.	$55,470.51
Piping, etc.	4,340.38
Welding material	210.00
Meters, gauges, valves, etc.	512.26
Miscellaneous (freight, autos, travel expenses, etc.)	207.37
Steel buildings	3,909.95
Electric fixtures and radiators	635.81
Boiler plate and iron	31.64
Total	$65,317.92

The following items originally installed under Job Order 107 were in service in the Wellington station as of December 31, 1939:

Description	Book cost as determined from F.P.C. working papers, exclusive of 5% engineering fees
Engines, etc.	$3,027.26
Piping, etc.	886.82
Cement and reinforcing iron	196.06
Welding material	120.00
Lumber and miscellaneous material	425.69
Meters, gauges, valves, etc.	136.46
Miscellaneous (freight, autos, travel expenses, etc.)	22.00
Labor (company and contract)	1,545.02
Pulleys and clutches	437.92
Air tank	94.80
Boiler plate and iron	31.64
Total	$6,923.71

The remaining items installed under Job Order 107, exclusive of those salvaged and returned to stores according to the company's records, represent material, equipment and installation costs which were lost and which we recommend be retired from service as of 1931.

F. W. Cogg
Associate Engineer

Docket G-124

EXHIBIT 199

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COLORADO-WYOMING GAS COMPANY
EXAMINER'S ENTRIES TO ADJUST GAS PLANT
AS OF DECEMBER 31, 1939

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10/23/40

Particulars	Debit	Credit
No. 216		
Gas Plant (Compressing Stations - Arvada)	$1,978.96	
Surplus (Compressing Station Maintenance - 1931)	3,510.73	
Gas Plant (Compressing Stations - Wellington)		$5,489.69

To adjust company's transfer Voucher 1413, December 30, 1931, in connection with the transfer of equipment from the Wellington compressing station to the Arvada compressing station. This entry is in accordance with recommendations of the engineering staff as per the attached schedule.

COPY

MEMORANDUM

October 15, 1940

Subject: G-124 - Colorado-Wyoming Gas Company - Revision of Respondent's T.V. 1413 covering charges to Wellington compressing station through Job Order 127 in connection with transfer of equipment to Arvada compressing station.

The attached data are furnished in order to enable the accounting staff to restate the accounting for charges made in 1931 to the Wellington compressing station by the company's T.V. 1413. These charges were in connection with the transfer of equipment to the Arvada compressing station through Job Order 127.

F. W. Copp
Associate Engineer

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10/23/40

Particulars	Debit	Credit
No. 217		
Gas Plant (Compressing Stations - Arvada)	$ 573.64	
Reserve for Depreciation of Gas Plant in Service	125.07	
Gas Plant (Compressing Stations - Arvada)		$ 698.71

To adjust for interest during construction applicable to the equipment transferred from the Wellington compressing station the Arvada compressing station, and the retirements incidental thereto. (This represents interest as recomputed in Examiner's entry No. 206).

No. 218		
Reserve for Depreciation of Gas Plant in Service	$3,454.24	
Gas Plant (Compressing Stations - Wellington)		$3,454.24

To give effect to the retirement of certain items of property at Wellington compressing station considered as no longer used or useful. This retirement is made in accordance with the recommendations of the engineering staff as per the attached schedule.

Docket G-124 EXHIBIT 199

COLORADO-WYOMING GAS COMPANY
EXAMINER'S ENTRIES TO ADJUST GAS PLANT 31
No. 215 (cont'd) AS OF DECEMBER 31, 1939

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MEMORANDUM

October 15, 1940

Subject: G-124 - Colorado-Wyoming Gas Company,
Non-operative Compressing Station Property

The property listed below, all located at Wellington Compressing Station, has been non-operative since the dates shown below. In our opinion, this property is no longer used or useful, and if retired, net salvage would be negligible. The cost shown below for item 2 is book cost, obtained from data prepared by Commission examiners. The major portion of the costs shown for items 1, 3, and 4 is estimated.

Item	Property	Installed on Job Order No.	Cost (Excluding 5% Engineering Fee)	Non-Operative Since
1	10" suction line to north valve house from Fort Collins Producing Corporation connection	1010	$ 845.56	April 1937
2	Pulsation eliminator	119	2,111.24	April 1937
3	Lubricating oil storage system	1010	147.30	Sept. 1932
4	6" Fort Collins by-pass line	1010	350.14	Aug. 1931
	Total for items 1 to 4		$3,454.24	

Our reasons for classifying the above items of property as non-operative are set forth below.

Items 1 and 2: The 10" line (item 1) was used to bring Wellington field gas to the purchase meters and suction header of Wellington Compressing Station from Fort Collins Producing Corporation gasoline extraction plant. The pulsation eliminator (item 2) was installed on the 10" suction line (item 1) to reduce pulsations in flow of gas from the gasoline extraction plant to the compressing station. Since the introduction of Texas gas, due to the decline of the Wellington field, the quantity of gas purchased from Fort Collins Producing Corporation has been very small. No gas has been purchased by Colorado-Wyoming Gas Company from Fort Collins Producing Corporation since April 1937. The gasoline extraction plant has been dismantled and a connection is no longer maintained.

Item 3: This lubricating oil line, tank and pump were in use while Wellington Compressing Station was in regular operation, with 10 engine-compressor units installed. Since all the twin compressor units were removed to the Arvada Station in 1930 and 1931, Wellington has been operated only for peak loads a few days each year since August 1932, and lubricating oil has been stored in drums, no large supply being kept on hand. The storage tank and pump have been disconnected.

Item 4: This line was used to deliver Wellington field gas to Fort Collins after compression. No Wellington field gas has been delivered to Fort Collins since the last of the twin compressor units was removed from Wellington Compressing Station in July 1931. The Fort Collins by-pass line (item 4) has not been in use since August 1931.

F. W. Copp

Docket G-124

EXHIBIT 199

COLORADO-WYOMING GAS COMPANY
EXAMINER'S ENTRIES TO ADJUST GAS PLANT
AS OF DECEMBER 31, 1939

33

Particulars	Debit	Credit
No. 219		
Reserve for Depreciation of Gas Plant in Service	$1,007.31	
Gas Plant (Compressing Stations - Wellington)		$1,007.31

To give effect to retirement in 1932 of the superstructure, piping and other equipment in the cooling tower of the Wellington compressing station. The following memorandum prepared by the engineering staff is the basis for this retirement:

COPY

MEMORANDUM

October 15, 1940

Subject: G-124 - Colorado-Wyoming Gas Company - Retirement of cooling tower installed at Wellington compressing station in 1926 under Job Order 101C.

The cooling tower installed at Wellington compressing station in 1926 under Job Order 101C was retired in 1932, according to Geo. C. Grill, Compressing Station Superintendent. The concrete foundation for the cooling tower is still in use as a hotwell, but the superstructure, piping and other equipment were removed from service.

Below is a summary of cooling tower costs, exclusive of 5% engineering fees, which we recommend be retired. No salvage value is recommended for the material and equipment removed. The major portion of the costs is estimated as shown by our work sheets.

Material and equipment	$ 694.30
Labor	274.92
Supervision	14.00
	$ 983.22
"Other overheads" at 2.45%	24.09
Total to be retired	$1,007.31

F. W. Copp
Associate Engineer

Docket G-124

22572

EXHIBIT 199

COLORADO-WYOMING GAS COMPANY
EXAMINER'S ENTRIES TO ADJUST GAS PLANT
AS OF DECEMBER 31, 1939

Particulars		Debit	Credit
	No. R-220		
Gas Plant		$63,158.14	
Lateral Lines	$ 2,297.14		
Main Line	8,247.54		
Measuring Stations (Transmission)	1,834.43		
Measuring Stations (Distribution)	45,081.69		
Land Owned in Fee (Distribution)	2,446.30		
Compressing Stations	1,277.02		
Office Furniture and Equipment	1,974.02		
Gas Plant			$63,158.14
Lateral Lines	$22,607.64		
Main Line	38,104.20		
Land Owned in Fee (Transmission)	2,446.30		

Reclassification setting out measuring station costs, December 31, 1939, as revised by Examiner of Accounts, based upon inventory of measuring station equipment made by the Bureau of Engineering, together with analysis of book cost of structures and other measuring station construction costs (see Schedule No. 7) and also to transfer within the plant accounts various book charges which appear as of December 31, 1939 to relate to property other than that covered by the job order to which charged on the Respondent's books.

No. R-221

Gas Plant (Lateral Lines)	$67,093.17	
Gas Plant (Main Line)		$67,093.17

To transfer from main line the cost of the following lateral lines included in the cost of that section of the main line from Arapahoe Station to Boulder Junction constructed under Job Order No. 113:

Lateral Line	Amount	For details see Schedule:
Boulder, Colorado	$59,218.80	4-A
Arvada, Colorado	77.83	4-B
Wheatridge, Denver, Colorado Fringe	19.35	4-C
West 32nd Avenue, Denver, Colorado Fringe	4,615.92	4-D
West Colfax Avenue, Denver, Colorado Fringe	2,937.89	4-E
U. S. War Department, Fort Logan, Colorado	223.38	4-F
	$67,093.17	

Docket G-124

Schedule No. 1
Sheet 1 of 1

COLORADO-WYOMING GAS COMPANY
INVESTMENT IN GAS PLANT PER BOOKS AND AS ADJUSTED
AS OF DECEMBER 31, 1939

BV raf/hea 10/21/40	Respondent's Account Number (1)	Schedule Number (2)	Description (3)	Per Books (4)	Examiner's Adjustments Debit (5)	Examiner's Adjustments Credit (6)	Adjusted Balance (7)
			Gas Plant in Service				
			Intangible Plant				
	1019	2	Organization	$ 3,472.28	$ 17.50	$ 1,017.76	$ 2,472.02
			Transmission Plant				
	1004	3	Main Line	$1,185,100.32	$ 18,197.39	$195,844.52	$1,007,453.19
	1005	4	Lateral Lines	374,934.47	72,264.36	49,970.04	397,228.79
	1006						
	1013						
	1016						
	1021						
	1014	5	Measuring Stations		1,834.43		1,834.43
	1021	6	Compressing Stations	202,572.47	156,648.59	165,180.13	194,040.93
	1000	6	Land Owned in Fee	5,262.30		2,446.30	2,816.00
			Total Transmission Plant	$1,767,869.56	$248,944.77	$413,440.99	$1,603,373.34
			Distribution Plant				
		7	Measuring Stations		$ 45,081.69		$ 45,081.69
		7	Land Owned in Fee		2,446.30		2,446.30
			Total Distribution Plant		$ 47,527.99		$ 47,527.99
			General Plant				
	1009	8	Transportation Equipment	$ 4,668.61	$ 29.74	$ 38.95	$ 4,659.40
	1008	9	Office Furniture and Equipment	3,415.25	1,974.02	129.36	5,259.91
	1011	10	Miscellaneous Tools	1,264.97		1.26	1,263.71
	1018	11	Communication Equipment	498.74		23.75	474.99
			Total General Plant	$ 9,847.57	$ 2,003.76	$ 193.32	$ 11,658.01
			Other				
	1021	12	Interest on Excess Capacity	$ 79,362.52		$ 79,362.52	
			Total Gas Plant in Service	$1,860,551.93	$298,494.02	$492,014.59	$1,665,031.36
		13	Gas Plant Held For Future Use		$ 4,430.67		$ 4,430.67
			Gas Plant Adjustments		$ 86,731.55		$ 86,731.55
			Total Gas Plant	$1,860,551.93	$389,656.24	$492,014.59	$1,756,193.58

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EXHIBIT 199

225/5

Docket G-124

COLORADO-WYOMING GAS COMPANY
SUMMARY OF EXAMINER'S ENTRIES ADJUSTING GAS PLANT

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10/16/40

Entry No.	Description	Gas Plant in Service: Transmission Plant: Main Line	Transmission Plant: Lateral Lines	Transmission Plant: Measuring Stations	Transmission Plant: Compressing Stations	Transmission Plant: Land Owned in Fee	Distribution Plant: Measuring Stations	Distribution Plant: Land Owned in Fee	Other Account
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
200	Elimination of interest on excess capacity								Interest on Excess Capacity
201	Elimination of arbitrary percentages of 1929 and 1930 general expenses	$ (4,516.62)	$ (488.11)		$ (710.01)				
202	Adjustment for 5% engineering fees	(54,728.34)	(17,925.60)		(9,945.31)				Transportation Equipment Office Furniture and Equipment Miscellaneous Tools Communication Equipment
203	Elimination of certain legal fees	(6,750.00)	(1,500.00)						
204	Adjustment for cash discounts retained by Cities Service Company	(2,844.90)							
205	Reversal of interest during construction per books	(21,211.31)	(2,507.19)						
206	Interest during construction recommended for allowance	9,949.85	2,874.05						2,17[illegible]
207	Elimination of officers' traveling expenses	(407.49)	(135.83)						
208	Elimination of expenses in acquiring town border service at Greeley, Colorado		(375.00)						
R-209	Reclassification of cost of printing stock certificate book	(17.50)							Organization
210	Elimination of cost of ledger, journal, taxes, etc.	(119.36)							
221	Adjustment for directors fees, taxes, etc.								Organization

Subschedule No. 1-A
Sheet 1 of 2

COLORADO-WYOMING GAS COMPANY
SUMMARY OF EXAMINER'S ENTRIES ADJUSTING GAS PLANT

EXHIBIT 199 38

t sing ns	Plant in Service: Land Owned in Fee (7)	Distribution Plant: Measuring Stations (8)	Distribution Plant: Land Owned in Fee (9)	Other Account (10)	Other Amount (11)	Gas Plant Held for Future Use (12)	Gas Plant Adjustments (13)	Other Accounts: Account (14)	Other Accounts: Amount (15)
				Interest on Excess Capacity	($79,362.52)			Surplus - Interest Charged to Construction - Cr. - 1930	$ 34,394.48
								do. - 1931	32,510.00
								do. - 1932	12,458.04
0.01)								Surplus - Operation and General - 1929	2,519.74
5.31)								Surplus - Operation and General - 1930	3,195.00
				Transportation Equipment	(38.95)		$83,886.65	Reserve for Depreciation of Gas Plant in Service	(1,094.08)
				Office Furniture and Equipment	(129.36)				
				Miscellaneous Tools	(1.26)				
				Communication Equipment	(23.75)				
								Surplus - Operation and General - 1929	8,250.00
							2,844.90		
								Surplus - Interest Charged to Construction - Cr. - 1925	486.31
								do. - 1929	14,484.75
.84								do. - 1930	8,747.44
								do. - 1925	(486.31)
								do. - 1926	(2,400.81)
								do. - 1927	(831.02)
								do. - 1928	(5.46)
								do. - 1929	(8,218.39)
								do. - 1930	(2,439.48)
								do. - 1931	(291.17)
								do. - 1934	(1.68)
								do. - 1935	(203.44)
								do. - 1936	(38.99)
								do. - 1937	(62.01)
				Organization	17.50			Surplus - Operation and General - 1929	543.32
								Surplus - Operation and General - 1930	375.00
				Organization	(1,017.76)			Surplus - Operation and General - 1926	40.16
								Surplus - Taxes, General - 1931	77.20
								Surplus - Operation and General - 1926	202.30
								Capital Stock Expense	615.76

Docket G-124

COLORADO-WYOMING GAS COMPANY
SUMMARY OF PLANT ENTRIES ADJUSTING GAS PLANT

Entry No.	Description	Gas Plant in Service: Transmission Plant: Main Line	Transmission Plant: Lateral Lines	Transmission Plant: Measuring Stations	Transmission Plant: Compressing Stations	Transmission Plant: Land Owned in Fee	Distribution Plant: Measuring Stations	Distribution Plant: Land Owned in Fee	Other: Account	Other: Amount	Gas Plant Held for Future Use	Gas Plant Adjustments
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
212	To transfer facilities for serving International Metal Foundation		($ 4,430.67)									
213	Reversal of book entry recording transfer of compressing station equipment				$ 82,464.31 (60,520.10)						$4,430.67	
214	Elimination of 5% engineering fees from preceding entry				2,861.90							
215	Restatement of transfer of compressing station equipment				(3,830.87) 65,317.92							
216	Adjustment of company's transfer voucher 1413 in connection with transfer of compressing station equipment				(79,523.89) 1,978.96							
217	Adjustment for interest during construction applicable to compressing station equipment transferred and retired				(5,489.69) 573.64							
218	Retirement of compressing station equipment not used or useful				(698.71)							
219	Retirement of additional compressing station equipment not used or useful				(3,454.24) (1,007.31)							
R-220	Transfer of items of property charged to improper job orders and also measuring station costs	$ 8,247.54 (38,104.20)	2,297.14 (22,607.64)	$1,834.43	1,277.02	($2,446.30)	$45,081.69	$2,446.30	Office Furniture and Equipment	$ 1,974.02		
R-221	Transfer cost of certain lateral lines included in the cost of main line	(67,093.17)	67,093.17									
222	Retirement of cost of abandoned meter vault	(51.63)										
223	To adjust excess retirement of transportation equipment cost								Transportation Equipment	29.74		
	Total Debits	$532,061.36	$ 18,197.39	$72,264.36	$1,834.43	$156,648.59	$2,446.30	$45,081.69	$2,446.30		$ 2,021.26	$4,430.67	$86,731.
	Total Credits	532,061.36	195,844.52	49,970.04		165,180.13					80,573.60		
	Net		($177,647.13)	$22,294.32	$1,834.43	($ 8,531.54)	($2,446.30)	$45,081.69	$2,446.30		($78,552.34)	$4,430.67	$86,731.

Subschedule No. 1-A
Sheet 2 of 2

EXHIBIT 199 39

COLORADO-WYOMING GAS COMPANY
SUMMARY OF PROPERTY ENTRIES ADJUSTING GAS PLANT

Gas Plant in Service										
Plant		Distribution Plant		Other		Gas Plant Held for Future Use	Gas Plant Adjustments	Other Accounts	
Compressing Stations	Land Owned in Fee	Measuring Stations	Land Owned in Fee	Account	Amount			Account	Amount
(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
						1,430.67			
82,464.31								Reserve for Depreciation of Gas Plant in Service	(20,114.21)
(60,520.10)									
								Material and Supplies	(1,800.00)
2,861.90									
(3,830.87)								Reserve for Depreciation of Gas Plant in Service	968.97
65,317.92								Material and Supplies	1,800.00
(79,523.89)								Reserve for Depreciation of Gas Plant in Service	12,405.97
1,978.96								Surplus - Maintenance - 1931	3,510.73
(5,489.69)									
573.64									
(698.71)								Reserve for Depreciation of Gas Plant in Service	125.07
(3,454.24)								Reserve for Depreciation of Gas Plant in Service	3,454.24
(1,007.31)								Reserve for Depreciation of Gas Plant in Service	1,007.31
1,277.02	($2,446.30)	$45,081.69	$2,446.30	Office Furniture and Equipment	$ 1,974.02				
								Reserve for Depreciation of Gas Plant in Service	51.63
				Transportation Equipment	29.74			Reserve for Depreciation of Gas Plant in Service	(29.74)
156,648.59		$45,081.69	$2,446.30		$ 2,021.26	$4,430.67	$86,731.55		$142,405.12
165,180.13	$2,446.30				80,573.60				38,046.77
(8,531.54)	($2,446.30)	$45,081.69	$2,446.30		($78,552.34)	$4,430.67	$86,731.55		$104,358.35

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Docket G-121

Schedule No. 2
Sheet 1 of 1

COLORADO-WYOMING GAS COMPANY
ORGANIZATION
AS OF DECEMBER 31, 1939

EXHIBIT 199 40

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To Whom Paid and Description	Per Books	Examiner's Adjustments Debit	Examiner's Adjustments Credit	Adjusted Total
(1)	(2)	(3)	(4)	(5)
To H. L. Doherty and Company				
To U. S. Corporation Company for incorporation fee	$ 75.00			$ 75.00
Sundry expenses of Prucnoff, Robinson and Sloan, New York attorneys	46.82			46.82
To Hardwell, McCourt and Strong for qualification fees	165.70			165.70
Fees of Directors' meeting, December 19, 1925	200.00		$ 200.00	
Fee for filing annual report	2.00		2.00	
To S. W. Reese and Company for two #2 desk seals	9.00			9.00
Cost of printing stock certificate book		$17.50		17.50
To U.S. Corporation for 3 certified copies of General Corporate Laws, and 3 certified copies of certificate of incorporation.	16.00			16.00
Tax Stamps	50.76		50.76	
To Hardwell, McCourt and Strong for tax on capital stock of Colorado-Wyoming Gas Company in Colorado	15.00		15.00	
Incorporation services of Prucnoff, Robinson and Sloan, New York attorneys	1,500.00			1,500.00
To Cheyenne Light, Fuel and Power Company for cost of qualifying in Laramie County, Wyoming	117.00			117.00
To Public Service Company of Colorado Services of Hardwell, McCourt and Strong in regard to incorporation	585.00			585.00
Original issue documentary stamp tax	750.00		750.00	
Totals	$3,472.28	$17.50	$1,017.76	$2,472.02

Docket G-124

Schedule No. 3
Sheet 1 of 1

COLORADO-WYOMING GAS COMPANY
SUMMARY OF MAIN LINE PER BOOKS AND AS ADJUSTED
AS OF DECEMBER 31, 1939

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9/6/40

Sub-Schedule Number (1)	Main Line (2)	Total Book Cost (3)	Examiner's Adjustments Debit (4)	Examiner's Adjustments Credit (5)	Adjusted Total (6)
3-A	Arapahoe Station (Near Littleton, Colorado) to Boulder Junction, Colorado	$ 474,336.44	$ 7,396.42	$130,073.40	$ 351,659.46
3-B	Boulder Junction, Colorado to Fort Collins, Colorado	393,936.38	6,513.99	37,502.43	362,947.94
3-C	Fort Collins, Colorado to Cheyenne, Wyoming	313,583.26	4,259.15	27,841.77	290,000.64
3-D	Berthoud, Colorado Field	3,244.24	27.83	426.92	2,845.15
	Totals	$1,185,100.32	$18,197.39	$195,844.52	$1,007,453.19

EXHIBIT 199

Docket G-121,

Schedule No. 11,
Sheet 1 of 1

COLORADO-WYOMING GAS COMPANY
STATEMENT OF OVERHEADS CAPITALIZED ON BOOKS
AND AS ADJUSTED

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Description (1)	Per Books (2)	Examiner's Adjustments Debit (3)	Examiner's Adjustments Credit (4)	As Adjusted (5)
5% engineering fee paid to H. L. Doherty and Company (years 1926 to 1934, inclusive) and Cities Service Company (years 1935 to 1937, inclusive) $85,866.66 Less amount retired, per books 1,074.08	$ 82,792.57		$ 82,792.57	
Interest on excess capacity from March 1, 1930 to December 31, 1932	79,362.52		79,362.52	
Interest during construction	23,718.50	$15,552.38	24,479.22	$14,791.66
General overhead expenses 1929 1930	2,519.74 3,195.00		2,519.74 3,195.00	
Services and expenses of C. H. W. Burnham, Vice President and Engineer $ 9,546.62 Less amount retired, per books 49.08	9,497.54			9,497.54
Services and expenses of R. M. Tussard, Engineer	2,335.40			2,335.40
Company pay roll charges - engineering and supervision $32,716.61 Less amount retired, per books 427.29	32,289.32		475.40	31,813.92
Services and expenses of C. J. Shortess, Vice President and General Manager	6,585.13		518.22	6,066.91
Expenses of J. D. Creveling, Vice President	400.00			400.00
Services and expenses of H. P. Davis $ 924.75 Less amount retired 33.63	891.12		25.10	866.00
Pay roll items charged by H. L. Doherty and Company	1,152.00			1,152.00
Services and expenses of attorney in regard to right-of-way acquisition	5,862.74			5,862.74
Miscellaneous legal fees and expenses	9,547.83		8,250.00	1,297.83
Automobile and transportation expenses $ 6,212.50 Less amount retired 44.33	6,068.17		112.50	5,955.67
Rent during construction	1,635.00			1,635.00
Maps of system of surveying incidental thereto	2,879.76			2,879.76
Engineering services and expenses charged by Public Service Company of Colorado	1,387.06			1,387.06
Other engineering services and expenses	4,710.70		520.16	4,190.54
Other miscellaneous overheads	1,715.21		136.86	1,578.35
Totals	$278,545.31	$15,552.38	$202,387.29	$91,710.40

EXHIBIT 199

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Docket G-154

Subschedule No. L-4
Sheet 1 of 2

COLORADO-WYOMING GAS COMPANY
SUMMARY OF OVERHEADS CAPITALIZED ON BOOKS
BY MAIN AND LATERAL LINES

Description (1)	Total Overheads (2)	5 Percent Engineering Fees (3)	Engineering and Supervision Services and Expenses (4)	Law Expenditures (5)	Interest during Construction (6)	General Administration (7)	Rents (8)	Transportation (9)	Interest on Excess Capacity (15)
Main Line									
Arapahoe to Boulder Junction (includes lateral lines to Boulder, Arvada, Fort Logan and miscellaneous serving the Denver Fringe	$ 58,584.35	$21,787.50	$13,515.64	$ 5,626.22	$11,175.00	$ 4,673.88	$ 749.57	$ 956.74	
Boulder Junction to Fort Collins	47,279.30	18,505.28	8,769.29	5,149.52	9,550.00	3,416.03	471.69	1,117.69	
Fort Collins to Cheyenne	51,169.08	14,495.56	7,463.57	1,097.78	486.51	2,169.15	170.00	1,546.91	
Northend Field	664.70	130.80	140.95	560.00				52.95	
Totals	$137,657.43	$54,859.14	$29,889.25	$12,533.52	$21,211.51	$10,259.06	$1,391.06	$3,514.29	
Lateral Lines									
Boulder, Colorado Arvada, Colorado Wheatridge, Denver, Colorado Fringe West 32nd Avenue, Denver, Colorado Fringe West Colfax Avenue, Denver, Colorado Fringe	These laterals were constructed under job order No. 115 covering main line from Arapahoe to Boulder Junction. Examiner's adjusting entry No. R-221 allowed overheads to remain in the main line.								
U.S. War Department, Ft. Logan, Colorado	$ 3,916.75	$ 2,313.39	$ 1,177.69			$ 136.62		$ 289.05	
Golden, Colorado	7,433.78	3,080.20	3,695.11	$ 500.00		40.50		117.97	
Brighton, Colorado and Ft. Lupton, Colorado	885.34	168.23	617.70					99.41	
Longmont, Colorado	304.56	278.40	25.96						
Berthoud, Colorado	19,201.50	8,736.64	4,498.50	2,577.25	$ 2,507.19	597.88	$ 93.94	599.10	
Johnstown, Colorado and Greeley, Colorado	317.35	176.90	107.50					32.95	
Loveland, Colorado	806.35	218.45	475.40					112.50	
International Hotel Foundation									
Denver Board of Water Commissioners, Marston Lake Plant	338.73	95.02	214.91					28.80	
Adolph Coors Company, Golden, Colorado	125.90	56.75	46.25					40.90	
Valmont Electric Plant of Public Service Company of Colorado	2,207.89	820.54	1,290.97					96.58	
Lutheran Sanitarium	273.90	69.50	150.40			37.50		16.50	
Hiner-Hupson Company, Brighton, Colorado									
Colorado Portland Cement Company, La Porte, Colorado	1,891.56	1,349.78	353.50			52.00		136.28	
U.S. War Department, Fort Warren, Wyoming	1,640.05	451.20	820.37			225.97		142.51	
Totals	$ 39,284.26	$17,794.80	$13,468.06	$ 2,877.25	$ 2,507.19	$ 1,090.47	$ 93.94	$1,152.55	

EXHIBIT 199 (85)

Docket G-124

Schedule No. 4-A
Page 2 of 2

COLORADO-WYOMING GAS COMPANY
SUMMARY OF OVERHEADS CAPITALIZED PER BOOKS
BY MAIN AND LATERAL LINES

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Description (1)	Total Overheads (2)	5 Percent Engineering Fees (3)	Engineering and Supervision Services and Expenses (4)	Law Expenditures (5)	Interest during Construction (6)	General Administration (7)	Rents (8)	Transportation (9)	Interest on Excess Capacity (10)
Compressing Stations									
Arvada Station	$ 16,079.29	$ 6,452.48	$ 7,900.25			$ 795.22	$ 150.00	$ 779.59	
Wellington Station	5,968.49	1,690.96	1,983.20			272.49		221.84	
Totals	$ 22,047.78	$ 8,143.31	$ 9,883.45			$ 1,067.71	$ 150.00	$1,101.33	
General Plant	$ 193.52	$ 193.52							
Other									
Interest on Excess Capacity	$ 79,362.52								$79,362.52
Total Overheads Per Books	$278,945.31	$82,738.57	$53,140.74	$15,110.57	$25,718.50	$ [illegible]	$1,635.00	$6,068.17	$79,362.52

EXHIBIT 199
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Docket G-[illegible]

Subschedule No. 14-B
Sheet 1 of 1

COLORADO-WYOMING GAS COMPANY
SUMMARY OF OVERHEADS CAPITALIZED AS ADJUSTED
BY MAIN AND LATERAL LINES

Description (1)	Total Overheads (2)	Engineering and Supervision Services and Expenses (3)	Law Expenditures (4)	Interest during Construction (5)	General Administration (6)	Rents (7)	Transportation (8)
Main Line							
Arapahoe to Boulder Junction (includes lateral lines to Boulder, Arvada, Fort Logan and miscellaneous serving the Denver Fringe)	$20,941.97	$11,592.57	$2,001.22	$ 3,669.13	$ 1,932.94	$ 749.37	$ 996.74
Boulder Junction to Fort Collins	18,172.24	9,409.85	2,324.32	3,695.03	1,153.66	471.69	1,117.69
Fort Collins to Cheyenne	19,380.06	8,079.23	1,097.78	2,574.65	6,111.49	170.00	1,346.91
Berthoud Field	581.73	157.74	360.00	11.04			52.95
Totals	$59,076.00	$29,239.39	$5,783.32	$ 9,949.85	$ 9,198.09	$1,391.06	$3,514.29
Lateral Lines							
Boulder, Colorado	These laterals were constructed under job order No. 113 covering main line from Arapahoe to Boulder Junction. Examiner's adjusting entry No. R-221 allowed overheads to remain in the main line.						
Arvada, Colorado							
Wheatridge, Denver, Colorado Fringe							
West 32nd Avenue, Denver, Colorado Fringe							
West Colfax Avenue, Denver, Colorado Fringe							
U.S. War Department, Fort Logan, Colorado							
Golden, Colorado	$ 1,959.45	$ 1,309.13		$ 357.77	$ 3.50		$ 289.05
Brighton, Colorado and Fort Lupton, Colorado	4,637.65	3,695.11	$ 500.00	284.07	40.50		117.97
Longmont, Colorado	664.21	617.70		7.10			39.41
Berthoud, Colorado	68.11	52.51		15.60			
Johnstown, Colorado and Greeley, Colorado	8,020.43	4,510.57	877.25	1,810.64	328.93	$ 93.94	399.10
Loveland, Colorado	161.91	115.54		13.42			32.95
International Metal Foundation							
Denver Board of Water Commissioners, Marston Lake Plant	259.15	214.91		15.44			28.80
Adolph Coors Company, Golden, Colorado	87.45	46.25		.30			40.90
Valmont Electric Plant of Public Service Company of Colorado	1,614.24	1,290.97		226.69			96.58
Lutheran Sanitarium							
Kuner-Empson Company, Brighton, Colorado	206.06	150.40		1.66	37.50		16.50
Colorado Portland Cement Company, La Porte, Colorado	647.66	408.88		50.50	52.00		136.28
U.S. War Department, Fort Warren, Wyoming	1,031.01	855.55		28.85	4.10		142.51
Totals	$19,357.33	$13,267.52	$1,377.25	$ 2,812.04	$ 466.53	$ 93.94	$1,340.05
Compressing Stations							
Arvada Station	$10,508.11	$ 7,800.23		$ 1,593.28	$ 85.21	$ 150.00	$ 879.39
Wellington Station	2,768.96	1,838.04		436.49	272.49		221.94
Totals	$13,277.07	$ 9,638.27		$ 2,029.77	$ 357.70	$ 150.00	$1,101.33
Total Overheads as Adjusted	$91,710.40	$52,145.18	$7,160.57	$14,791.66	$10,022.32	$1,635.00	$5,955.67

EXHIBIT 199

22633

EXHIBIT 200
7

Statement of Composite Service Lives Determined for Property of Colorado-Wyoming Gas Company

Account Name	Adjusted Book Cost 12-31-39	Service Life (Years)	Annual Straight Line Rate-%
Intangible Plant			
Organization Expense	$ 2,472.02	Non-depreciable	
Transmission Plant			
Main Line	1,007,453.19	50	2.00
Lateral Lines	397,228.79	40	2.50
Measuring Stations	1,834.43	27	3.70
Compressing Stations	194,040.93	37	2.70
Compressing Station Land	2,816.00	Non-depreciable	
Total	$1,603,373.34	-	-
Distribution Plant			
Measuring Stations	$ 45,081.69	30	3.33
Measuring Station Land	2,446.30	Non-depreciable	
Total	$ 47,527.99	-	-
General Plant			
Transportation Equipment	$ 4,659.40	5	20.00
Office Furniture and Equipment	5,259.91	15	6.67
Miscellaneous Tools	1,263.71	15	6.67
Communication Equipment	474.99	30	3.33
Total	$ 11,658.01	-	-
Other			
Interest on Excess Capacity	$ -	-	-
Total Plant in Service	$1,665,031.36	-	-
Gas Plant Held for Future Use	4,430.67	-	-
Gas Plant Adjustments	86,731.55	-	-
Total Gas Plant	$1,756,193.58	-	-

EXHIBIT 201

Docket G-124

COLORADO-WYOMING GAS COMPANY
EXAMINER'S ADJUSTING ENTRIES RELATING TO
ANNUAL AND ACCRUED DEPRECIATION

Particulars	Debit	Credit
Entry No. 400		
Reserve for depreciation	$519,719.50	
Surplus - depreciation (years as below)		$519,719.50

To reverse the Respondent's annual provisions for depreciation. The following is a summary by years of the Respondent's annual provisions:

Year	Plant Account at End of Year Per Books	Base		Annual Rate	Annual Provision
1925	$ 76,225.30	$ 108,675.00	(December)	10%	$ 905.67
1926	364,918.21	108,675.00	(6 months)	10%)	
		303,786.00	(5 months)	10%)	21,244.81
		378,336.00	(1 month)	10%)	
1927	485,217.83	357,891.00		5%	17,895.00
1928	497,989.89	461,405.00		5%	23,070.00
1929	1,392,375.35	514,338.00		5%	25,749.00
1930	1,736,530.13	1,650,000.00		4%	66,000.00
1931	1,821,171.20	Note 1			56,672.02
1932	1,832,893.26	Note 1			32,183.00
1933	1,832,297.35	1,600,000.00		3%	48,000.00
1934	1,832,518.59	1,600,000.00		3%	48,000.00
1935	1,845,885.07	1,600,000.00		3%	48,000.00
1936	1,852,919.34	1,600,000.00		3%	48,000.00
1937	1,858,540.15	Note 2			28,000.00
1938	1,859,565.78	Note 2			28,000.00
1939	1,860,551.93	Note 2			28,000.00
					$519,719.50

Notes

1. The depreciation provisions for 1931 and 1932 were entered in accordance with instructions received by the Colorado-Wyoming Gas Company from Henry L. Doherty and Co. The records, however, do not show the depreciable base or the rates used.
2. Effective January 1, 1937 the annual provision for depreciation was arbitrarily reduced from $48,000 to $28,000 per year due to the fact that the reserve aggregated an amount considered by the company to be relatively large in relation to the Plant Accounts.

Entry No. 401		
Surplus - Miscellaneous Income Deductions - 1937	$85.00	
Reserve for Depreciation (Salvage)	20.00	
Reserve for Depreciation (Cost)		$105.00

To correct Respondent's accounting in the depreciation reserve for the retirement of certain land costs in 1937. Land purchased for $105.00 in 1927 for use at the Wellington compressing station was subsequently lost due to error in title. The Respondent received $20.00 for signing quit claim deed at time title was relinquished.

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EXHIBIT 201

Docket G-[illegible]4

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COLORADO-WYOMING GAS COMPANY
EXAMINER'S ADJUSTING ENTRIES RELATING TO
ANNUAL AND ACCRUED DEPRECIATION

Particulars	Debit	Credit
Entry No. 402		
Surplus - depreciation	$23,735 79	
Year 1926	$ 4,389.65	
1927	8,081.03	
1928	14,636.40	
1929	18,033.53	
1930	34,487.33	
1931	41,280.85	
1932	38,437.24	
1933	38,113.84	
1934	37,195.80	
1935	37,417.68	
1936	37,844.58	
1937	37,785.40	
1938	38,066.59	
1939	37,965.67	
Reserve for depreciation of gas plant in service		$23,617.24
Reserve for depreciation of gas plant held for future use		118.35

To record the annual depreciation of gas plant in service, based on service lives estimated by Bureau of Engineering. The gas plant held for future use is segregated by Examiner's entry No. 212 as of December 31, 1938. Depreciation computed on this property to December 31, 1938 is charged to depreciation expense, and arrived at as follows, with a depreciable period of one year:

	Book Cost	Annual Straight Line Rate - %	Accrued Depreciation
Lateral line	$3,517.24	2.50	$ 87.93
Measuring facilities	913.43	3.33	30.42
	$4,430.67		$118.35

See Schedule No. 1 for details of adjusted annual depreciation.

COLORADO-WYOMING GAS COMPANY
SUMMARY OF ANNUAL AND ACCRUED DEPRECIATION
OF GAS PLANT IN SERVICE AND HELD FOR FUTURE USE

Line No.	Particulars (1)	Total (2)	Gas Plant in Service: Total Gas Plant in Service (3)	Intangible Plant (4)	Transmission Plant (5)	Distribution Plant (6)	General Plant (7)	Other (8)	Gas Plant Held for Future Use (9)
	Costs subject to depreciation:								
1	Original charges per books	$1,898,029.31	$1,898,029.31	$3,472.28	$1,794,114.19		$21,080.32	$79,362.52	
2	Examiner's adjustments	(191,089.90)	(195,520.57)	(1,000.26)	(164,496.22)	$47,527.99	1,810.44	(79,362.52)	$4,430.67
	Adjusted total cost subject to depre-	$1,706,939.41	$1,702,508.74	$2,472.02	$1,629,617.97	$47,527.99	$22,890.76		$4,430.67
4	Less retirements (ciation	37,477.38	37,477.38		26,244.63		11,232.75		
5	Adjusted cost at December 31, 1939 (*)	$1,669,462.03	$1,665,031.36	$2,472.02	$1,603,373.34	$47,527.99	$11,658.01		$4,430.67
	Depreciation, computed annually, based on service life estimates furnished by Bureau of Engineering:								
6	Annual rates			Non-depreciable	Various	3.33%	Various		
7	Year 1926	$ 4,389.65	$ 4,389.65		$ 3,515.86	$ 119.57	$ 754.22		
8	" 1927	8,081.03	8,081.03		7,023.61	247.62	809.80		
9	" 1928	14,636.40	14,636.40		13,542.63	247.62	846.15		
10	" 1929	18,033.53	18,033.53		16,053.08	301.64	1,678.81		
11	" 1930	34,487.33	34,487.33		32,248.21	650.40	1,588.72		
12	" 1931	41,280.85	41,280.85		38,474.21	1,055.74	1,750.90		
13	" 1932	38,437.24	38,437.24		35,526.29	1,160.05	1,750.90		
14	" 1933	38,113.84	38,113.84		35,317.47	1,160.05	1,638.32		
15	" 1934	37,195.80	37,195.80		35,311.06	1,160.05	724.69		
16	" 1935	37,417.68	37,417.68		35,327.95	1,195.04	894.69		
17	" 1936	37,844.58	37,844.58		35,603.09	1,341.13	900.36		
18	" 1937	37,785.40	37,785.40		35,671.82	1,500.35	613.23		
19	" 1938	38,066.59	37,948.24		35,348.95	1,500.35	1,098.94		$ 118.35
20	" 1939	37,965.67	37,965.67		35,364.03	1,500.35	1,101.29		
21	Total annual accruals to December 31, 1939	$ 423,735.59	$ 423,617.24		$ 394,328.26	$13,139.96	$16,149.02		$ 118.35
	Less retirement losses to December 31, 1939:								
22	Original costs retired (Schedule No. 6)	$ 37,477.38	$ 37,477.38		$ 26,244.63		$11,232.75		
23	Less salvage (Schedule No. 7)	7,523.39	7,523.39		4,555.04		2,968.35		
24	Net charges to reserve	$ 29,953.99	$ 29,953.99		$ 21,689.59		$ 8,264.40		
25	Reserve for depreciation at December 31, 1939, as adjusted	$ 393,781.60	$ 393,663.25		$ 372,638.67	$13,139.96	$ 7,884.62		$ 118.35
	For further details see Schedule No.				2		3		
	Net adjusted book cost at December 31, 1939:								
26	Adjusted book cost	$1,669,462.03	$1,665,031.36	$2,472.02	$1,603,373.34	$47,527.99	$11,658.01		$4,430.67
27	Adjusted depreciation reserve	393,781.60	393,663.25		372,638.67	13,139.96	7,884.62		118.35
28	Net adjusted book cost	$1,275,680.43	$1,271,368.11	$2,472.02	$1,230,734.67	$34,388.03	$ 3,773.39		$4,312.33

(*) Land costs included above are eliminated from the bases used in computations of annual depreciation.

( ) Indicate red figures.

EXHIBIT 201

COLORADO-WYOMING GAS COMPANY
ANNUAL AND ACCRUED DEPRECIATION OF TRANSMISSION PLANT

Line No.	Particulars (1)	Total Transmission Plant (2)	Main Line (3)	Lateral Lines (4)	Measuring Stations (5)	Compressing Stations (6)	Land Owned in Fee (7)
	Costs subject to depreciation:						
1	Original charges per books	$1,794,114.19	$1,186,291.42	$375,560.55		$226,999.92	$5,262.30
2	Examiner's adjustments	(164,496.32)	(177,647.13)	22,294.32	$1,834.43	(8,531.54)	(2,446.30)
3	Adjusted total cost subject to depreciation	$1,629,617.87	$1,008,644.29	$397,854.87	$1,834.43	$218,488.38	$2,816.00
4	Less Retirements	26,244.63	1,191.10	626.08		24,427.45	
5	Adjusted cost at December 31, 1939	$1,603,373.34	$1,007,453.19	$397,228.79	$1,834.43	$194,040.93	$2,816.00
	Depreciation, computed annually, based on service life estimates furnished by Bureau of Engineering:						
6	Annual rates		2%	2½%	3.7%	2.7%	Non-depreciable
7	Year 1926	$ 3,515.86	$ 3,515.86				
8	" 1927	7,023.61	5,524.17	$ 106.00		$ 1,393.44	
9	" 1928	13,542.63	5,803.21	636.06		7,103.37	
10	" 1929	16,063.08	7,639.80	1,009.74		7,403.54	
11	" 1930	32,248.21	18,902.73	5,574.16	$ 56.80	7,714.52	
12	" 1931	38,474.21	20,120.96	8,753.74	67.87	9,531.64	
13	" 1932	35,526.29	20,159.79	9,531.47	67.87	5,767.16	
14	" 1933	35,317.47	20,144.55	9,530.35	67.87	5,574.70	
15	" 1934	35,311.06	20,144.25	9,524.24	67.87	5,574.70	
16	" 1935	35,327.95	20,145.13	9,540.25	67.87	5,574.70	
17	" 1936	35,603.09	20,145.53	9,814.99	67.87	5,574.70	
18	" 1937	35,671.82	20,146.50	9,886.75	67.87	5,560.70	
19	" 1938	35,348.93	20,150.67	9,907.70	67.87	5,222.71	
20	" 1939	35,384.03	20,145.12	9,928.33	67.87	5,222.71	
21	Total accruals to December 31, 1939	$ 394,328.26	$ 222,588.27	$ 93,753.77	$ 667.63	$ 77,218.39	
	Less retirement losses to December 31, 1939:						
22	Original costs retired (Schedule No. 6)	$ 26,244.63	$ 1,191.10	$ 626.08		$ 24,427.45	
23	Less salvage (Schedule No. 7)	4,555.04	662.20	409.99		3,482.85	
24	Net charges to reserve	$ 21,689.59	$ 528.90	$ 216.09		$ 20,944.60	
25	Reserve for depreciation at December 31, 1939, as adjusted	$ 372,638.67	$ 222,159.37	$ 93,537.68	$ 667.63	$ 56,273.99	
	Net adjusted book cost at December 31, 1939:						
26	Adjusted book cost	$1,603,373.34	$1,007,453.19	$397,228.79	$1,834.43	$194,040.93	$2,816.00
27	Adjusted depreciation reserve	372,638.67	222,159.37	93,537.68	667.63	56,273.99	
28	Net adjusted book cost	$1,230,734.67	$ 785,293.82	$303,691.11	$1,166.80	$137,766.94	$2,816.00

( ) indicate red figures.

EXHIBIT 201

2204

Docket G-124

Schedule No. E-4

COLORADO-WYOMING GAS COMPANY
ANNUAL AND ACCRUED DEPRECIATION OF MAIN LINE

Line No.	Particulars	Total	Arapahoe Station to Boulder Junction	Boulder Junction to Fort Collins	Fort Collins to Cheyenne	Berthoud Field
	(1)	(2)	(3)	(4)	(5)	(6)
	Costs subject to depreciation:					
1	Original charges per books	$1,186,291.42	$475,047.54	$395,936.36	$314,063.26	$3,244.24
2	Examiner's adjustments	(177,647.13)	(122,676.98)	(30,988.44)	(23,582.62)	(399.09)
3	Adjusted total cost subject to depreciation	$1,008,644.29	$352,370.56	$362,947.94	$290,480.64	$2,845.15
4	Less retirements	1,191.10	711.10		480.00	
5	Adjusted cost at December 31, 1939	$1,007,453.19	$351,659.46	$362,947.94	$290,000.64	$2,845.15
	Depreciation, computed annually, based on service life estimates furnished by Bureau of Engineering:					
6	Annual rates	2%	2%	2%	2%	2%
7	Year 1926	$ 3,515.86			$ 3,515.86	
8	" 1927	3,524.17			3,524.17	
9	" 1928	3,803.21			3,803.21	
10	" 1929	7,639.80	$ 1,833.02		5,806.78	
11	" 1930	18,902.73	6,332.06	$ 6,741.73	5,807.28	$ 21.66
12	" 1931	20,120.96	7,018.32	7,252.04	5,807.28	43.32
13	" 1932	20,169.79	7,037.11	7,258.50	5,807.28	66.90
14	" 1933	20,144.55	7,024.87	7,255.50	5,807.28	56.90
15	" 1934	20,144.25	7,024.57	7,255.50	5,807.28	56.90
16	" 1935	20,145.13	7,025.45	7,255.50	5,807.28	56.90
17	" 1936	20,145.53	7,025.85	7,255.50	5,807.28	56.90
18	" 1937	20,146.50	7,025.93	7,255.50	5,808.17	56.90
19	" 1938	20,150.67	7,030.10	7,255.50	5,808.17	56.90
20	" 1939	20,145.12	7,030.25	7,258.96	5,799.03	56.90
	Total annual accruals to December 31, 1939	$ 222,688.27	$ 71,407.51	$ 72,044.23	$ 78,716.35	$ 520.18
	Less retirement losses to December 31, 1939:					
21	Original costs retired	$ 1,191.10	$ 711.10		$ 480.00	
22	Less salvage	662.20	512.20		150.00	
23	Net charges to reserve	$ 528.90	$ 198.90		$ 330.00	
24	Reserve for depreciation at December 31, 1939, as adjusted	$ 222,159.37	$ 71,208.61	$ 72,044.23	$ 78,386.35	$ 520.18
	Net adjusted book cost at December 31, 1939:					
25	Adjusted book cost	$1,007,453.19	$351,659.46	$362,947.94	$290,000.64	$2,845.15
26	Adjusted depreciation reserve	222,159.37	71,208.61	72,044.23	78,386.35	520.18
27	Net adjusted book cost	$ 785,293.82	$280,450.85	$290,903.71	$211,614.29	$2,324.97

(-) Indicate red figures.

EXHIBIT 201

22042

Docket G-124

COLORADO-WYOMING GAS COMPANY
ANNUAL AND ACCRUED DEPRECIATION OF LATERAL LINES

Line No.	Particulars	Total	Boulder	Arvada	Wheatridge	West 32nd Avenue	West Colfax Avenue	U. S. War Department, Ft. Logan	Golden	Brighton and Ft. Lupton	Longmont	Berthoud	Johnstown and Greeley	Loveland	International Metal Foundation
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
	Costs subject to depreciation:														
1	Original charges per books	$375,560.56							$48,764.07	$64,989.08	$3,411.22	$6,047.15	$182,820.08	$3,382.55	$4,587.11
2	Examiner's adjustments	22,294.32	$59,218.80	$77.83	$19.35	$4,615.92	$2,937.89	$223.38	(4,819.64)	(4,381.40)	(946.83)	(976.69)	(16,811.00)	(1,316.27)	(4,587.11)
3	Adjusted total cost subject to depreo.	$397,854.87	$59,218.80	$77.83	$19.35	$4,615.92	$2,937.89	$223.38	$43,944.43	$60,607.68	$2,464.39	$5,070.46	$166,009.08	$2,066.28	
4	Less retirements	626.08													
5	Adjusted cost at December 31, 1939	$397,228.79	$59,218.80	$77.83	$19.35	$4,615.92	$2,937.89	$223.38	$43,964.43	$60,607.68	$2,464.39	$5,070.46	$166,009.08	$2,066.28	
	Depreciation, computed annually, based service life estimates furnished by Bureau of Engineering:														
6	Annual rates	2½%	2½%	2½%	2½%	2½%	2½%	2½%	2½%	2½%	2½%	2½%	2½%	2½%	
7	Year 1927	$ 106.00													
8	1928	636.05													
9	1929	1,009.74	$ 870.12												
10	1930	5,574.16	1,480.47	$ 1.95	$ .48	$ 115.40	$ 73.45		$ 364.06			$ 65.70	$ 2,757.65	$ 24.97	
11	1931	8,753.74	1,480.47	$ 1.95	.48	115.40	73.45	$ 5.58	1,091.96	$ 752.73	$ 41.04	126.75	4,172.72	49.94	
12	1932	9,531.47	1,480.47	1.95	.48	115.40	73.45	5.58	1,094.06	1,505.46	61.61	126.76	4,174.73	49.94	
13	1933	9,530.35	1,480.47	1.95	.48	115.40	73.45	5.58	1,092.94	1,505.46	61.61	126.76	4,174.73	49.94	
14	1934	9,524.24	1,480.47	1.95	.48	115.40	73.45	5.58	1,092.94	1,505.46	61.61	126.76	4,175.19	49.94	
15	1935	9,540.25	1,480.47	1.95	.48	115.40	73.45	5.58	1,092.94	1,505.23	61.61	126.76	4,175.19	49.94	
16	1936	9,814.99	1,480.47	1.95	.48	115.40	73.45	5.58	1,092.99	1,505.23	61.61	126.76	4,175.19	49.94	
17	1937	9,896.75	1,480.47	1.95	.48	115.40	73.45	5.58	1,096.72	1,505.94	61.61	126.76	4,154.94	49.94	
18	1938	9,907.70	1,480.47	1.95	.48	115.40	73.45	5.58	1,096.72	1,515.19	61.61	126.76	4,154.94	51.20	
19	1939	9,928.33	1,480.47	1.95	.48	115.40	73.45	5.58	1,096.72	1,515.19	61.61	126.76	4,150.23	50.92	
20	Total annual accruals to Dec. 31,1939	$93,753.77	$15,174.82	$19.50	$ 4.80	$1,154.00	$ 734.50	$ 50.22	$10,212.05	$12,815.89	$ 533.92	$1,206.54	$ 40,265.51	$ 476.67	
	Less retirement losses to Dec. 31, 1939:														
21	Original cost retired	$ 626.08													
22	Less salvage	409.99													
23	Net charges to reserve	$ 216.09													
24	Reserve for depreciation at December 31, 1939, as adjusted	$93,537.68	$15,174.82	$19.50	$ 4.80	$1,154.00	$ 734.50	$ 50.22	$10,212.05	$12,815.89	$ 533.92	$1,206.54	$ 40,265.51	$ 476.67	
	Net adjusted book cost at Dec. 31, 1939:														
25	Adjusted book cost	$397,228.79	$59,218.80	$77.83	$19.35	$4,615.92	$2,937.89	$223.38	$43,964.43	$60,607.68	$2,464.39	$5,070.46	$166,009.08	$2,066.28	
26	Adjusted depreciation reserve	93,537.68	15,174.82	19.50	4.80	1,154.00	734.50	50.22	10,212.05	12,815.89	533.92	1,206.54	40,265.51	476.67	
27	Net adjusted book cost	$303,691.11	$44,043.98	$58.33	$14.55	$3,461.92	$2,203.39	$173.16	$33,752.38	$47,791.79	$1,930.47	$3,863.92	$125,743.57	$1,589.99	

( ) Indicate red figures.

COLORADO-WYOMING GAS COMPANY
ANNUAL ACCRUED DEPRECIATION OF LATERAL LINES

...st ...nd ...nue (6)	West Colfax Avenue (7)	U. S. War Department, Ft. Logan (8)	Golden (9)	Brighton and Ft. Lipton (10)	Longmont (11)	Berthoud (12)	Johnstown and Greeley (13)	Loveland (14)	International Metal Foundation (15)	Denver Board of Water Commissioners (16)	Adolph Coors Company (17)	Valmont Electric Plant (18)	Lutheran Sanitarium (19)	Kuner-Empson Company (20)	Colorado Portland Cement Co. (21)	U. S. War Department, Ft. Warren (22)
			$48,764.07	$64,989.08	$3,411.22	$6,047.15	$182,820.08	$3,382.93	$4,587.11	$1,996.01	$1,047.34	$17,240.12	$1,024.82	$1,877.04	$28,970.85	$9,612.93
.5.92	$2,937.89	$223.38	(4,819.64)	(4,381.40)	(946.83)	(976.69)	(15,611.00)	(1,316.27)	(4,587.11)	(608.64)	(355.29)	(4,812.14)		(826.60)	(3,022.81)	(1,534.73)
.5.92	$2,937.89	$223.38	$43,944.43	$60,607.68	$2,464.39	$5,070.46	$166,009.08	$2,066.66		$1,387.37	$ 692.05	$12,427.98	$1,024.82	$1,050.44	$25,948.14	$8,078.20
															626.06	
.5.92	$2,937.89	$223.38	$43,944.43	$60,607.68	$2,464.39	$5,070.46	$166,009.08	$2,036.66		$1,387.37	$ 692.05	$12,427.98	$1,024.82	$1,050.44	$25,322.08	$8,078.20

...%	2...%	2...%	2...%	2...%	2...%	2...%	2...%	2...%	2...%	2...%	2...%	2...%	2...%	2...%	2...%	2...%
															$ 106.00	
															636.05	
															639.62	
															639.62	$ 50.41
.5.40	$ 73.45		$ 364.06			$ 65.70	$ 2,757.65	$ 24.97							639.62	201.64
.5.40	73.45	$ 5.58	1,091.96	$ 752.73	$ 41.04	126.76	4,172.72	49.94							639.62	201.96
.5.40	73.45	5.58	1,094.06	1,505.46	61.61	126.76	4,174.73	49.94							639.62	201.96
.5.40	73.45	5.58	1,092.94	1,505.46	61.61	126.76	4,174.73	49.94							639.62	201.96
.5.40	73.45	5.58	1,092.94	1,505.46	61.61	126.76	4,175.19	49.94							633.05	201.96
.5.40	73.45	5.58	1,092.94	1,505.23	61.61	126.76	4,175.19	49.94						$ 16.24	633.05	201.96
.5.40	73.45	5.58	1,092.99	1,505.23	61.61	126.76	4,175.19	49.94	$ 14.45	$ 2.88	$ 258.56			15.04	633.05	201.96
.5.40	73.45	5.58	1,096.72	1,505.94	61.61	126.76	4,154.94	49.94	34.68	17.29	310.27			26.26	633.05	201.96
.5.40	73.45	5.58	1,096.72	1,515.19	61.61	126.76	4,154.94	51.20	34.68	17.30	310.70			26.26	633.05	201.96
.5.40	73.45	5.58	1,096.72	1,515.19	61.61	126.76	4,150.23	50.92	34.68	17.30	310.70	$ 25.62		26.26	633.05	201.96
4.00	$ 734.50	$ 50.22	$10,212.05	$12,815.89	$ 533.92	$1,206.54	$ 40,265.51	$ 476.67	$ 118.49	$ 54.77	$ 1,190.23	$ 25.62	$ 110.06	$7,738.45	$1,867.73
															$ 626.06	
															409.99	
															$ 216.09	
4.00	$ 734.50	$ 50.22	$10,212.05	$12,815.89	$ 533.92	$1,206.54	$ 40,265.51	$ 476.67	$ 118.49	$ 54.77	$ 1,190.23	$ 25.62	$ 110.06	$7,522.36	$1,867.73
.5.92	$2,937.89	$223.38	$43,944.43	$60,607.68	$2,464.39	$5,070.46	$166,009.08	$2,036.66	$1,387.37	$ 692.05	$12,427.98	$1,024.82	$1,050.44	$25,322.08	$8,078.20
4.00	734.50	50.22	10,212.05	12,815.89	533.92	1,206.54	40,265.51	476.67	118.49	54.77	1,190.23	25.62	110.06	7,522.36	1,867.73
1.92	$2,203.39	$173.16	$33,732.38	$47,791.79	$1,930.47	$3,863.92	$125,743.57	$1,559.99	$1,268.88	$ 637.28	$11,237.75	$ 999.20	$ 940.38	$17,799.70	$6,210.47

Docket G-124

Schedule No. 5

COLORADO-WYOMING GAS COMPANY
ANNUAL AND ACCRUED DEPRECIATION OF GENERAL PLANT

Line No.	Particulars (1)	Total General Plant (2)	Transportation Equipment (3)	Office Furniture and Equipment (4)	Miscellaneous Tools (5)	Communication Equipment (6)
	Costs subject to depreciation:					
1	Original charges per books	$21,050.52	$15,669.00	$3,647.61	$1,264.97	$498.74
2	Examiner's adjustments	1,810.44	(9.21)	1,844.66	(1.26)	(23.75)
3	Adjusted total cost subject to depreciation	$22,860.76	$15,659.79	$5,492.27	$1,263.71	$474.99
4	Less retirements	11,232.75	11,000.39	232.36		
5	Adjusted cost at Dec. 31, 1939	$11,628.01	$ 4,659.40	$5,259.91	$1,263.71	$474.99
	Depreciation, computed annually, based on service life estimates, furnished by Bureau of Engineering:					
6	Annual Rates		20%	6.67%	6.67%	3.33%
7	Year 1926	$ 754.22	$ 704.47	$ 27.86	$ 21.90	
8	" 1927	809.80	704.47	61.54	43.79	
9	" 1928	846.15	704.47	64.75	76.93	
10	" 1929	1,678.81	1,521.46	64.75	76.93	$ 15.67
11	" 1930	1,588.72	1,118.49	178.94	78.62	15.67
12	" 1931	1,750.90	1,315.49	341.12	78.62	15.67
13	" 1932	1,750.90	1,315.49	341.12	78.62	15.67
14	" 1933	1,656.52	1,200.91	341.12	78.62	15.67
15	" 1934	724.69	289.28	341.12	78.62	15.67
16	" 1935	894.69	459.28	341.12	78.62	15.67
17	" 1936	900.36	459.28	341.12	84.29	15.67
18	" 1937	613.25	172.16	341.12	84.29	15.67
19	" 1938	1,098.94	657.84	341.12	84.29	15.67
20	" 1939	1,101.29	657.84	345.47	84.29	15.67
21	Total depreciation accruals to December 31, 1939	$16,149.02	$11,477.86	$3,470.26	$1,028.43	$172.37
	Less retirement losses to Dec. 31, 1939:					
22	Original costs retired (Sched. No.6)	$11,232.75	$11,000.39	$ 232.36		
23	Less salvage (Schedule No. 7)	2,968.35	2,895.85	72.50		
24	Net charges to reserve	$ 8,264.40	$ 8,104.54	$ 159.86		
25	Reserve for deprec. at Dec. 31, 1939 as adjusted	$ 7,884.62	$ 3,373.32	$3,310.40	$1,028.43	$172.37
	Net adjusted book cost at Dec. 31, 1939:					
26	Adjusted book cost	$11,628.01	$ 4,659.40	$5,259.91	$1,263.71	$474.99
27	Adjusted depreciation reserve	7,884.62	3,373.32	3,310.40	1,028.43	172.37
28	Net adjusted book cost	$ 3,743.39	$ 1,286.08	$1,949.51	$ 235.28	$302.62

( ) indicate red figures.

22644
EXHIBIT 201

EXHIBIT 201

Docket G-124

Schedule No. 4

9

COLORADO-WYOMING GAS COMPANY
ANALYSIS OF RESERVE FOR DEPRECIATION, PER BOOKS,
FROM INCEPTION TO DECEMBER 31, 1939

Line No.	Year (1)	Balance at Beginning of Period (2)	Provision for Depreciation Chgd. to Exp. (3)	Retirements: Plant Cost (4)	Retirements: Salvage (5)	Balance at End of Period (6)
	month of Dec.1925		$ 905.67			$ 905.67
	1926	$ 905.67	21,244.81			22,150.48
	1927	22,150.48	17,895.00			40,045.48
	1928	40,045.48	23,070.00			63,115.48
	1929	63,115.48	25,749.00	$ 3,522.34	$ 1,091.85	86,433.99
	1930	86,433.99	66,000.00	53.31	45.00	152,425.68
	1931	152,425.68	56,672.02	21,944.21	1,800.00	188,953.49
	1932	188,953.49	32,183.00	1,140.98	532.08	220,527.59
	1933	220,527.59	48,000.00	3,240.59	994.99	266,281.99
	1934	266,281.99	48,000.00	1,265.00	170.00	313,186.99
	1935	313,186.99	48,000.00		(900.00)	360,286.99
	1936	360,286.99	48,000.00	5,472.33	2,598.97	405,413.63
	1937	405,413.63	28,000.00	3,195.41	965.00	431,183.22
	1938	431,183.22	28,000.00	480.00	150.00	458,853.22
	1939	458,853.22	28,000.00	539.05	91.50	486,405.67
			$519,719.50	$40,853.22	$7,539.39	

( ) Denotes red figure

Docket G-124

Schedule No. 5

COLORADO-WYOMING GAS COMPANY
ANALYSIS OF RESERVE FOR DEPRECIATION OF GAS PLANT IN SERVICE,
AS ADJUSTED, FROM INCEPTION TO DECEMBER 31, 1939

Line No.	Year	Balance at Beginning of Period	Provision for depreciation charged to Expense	Retirements: Plant Cost (Note 1)	Retirements: Salvage (Note 2)	Transferred to Gas Plant Held for Future Use	Balance at end of Period
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	1926		$ 4,389.65				$ 4,389.65
2	1927	$ 4,389.65	8,081.03				12,470.68
3	1928	12,470.68	14,636.40				27,107.08
4	1929	27,107.08	18,033.83	$3,522.34	$1,095.85		42,714.12
5	1930	42,714.12	34,487.33	53.31	45.00		77,193.14
6	1931	77,193.14	41,280.85	14,681.18	900.00		104,692.81
7	1932	104,692.81	38,487.24	2,263.26	532.08		141,398.87
8	1933	141,398.87	38,113.84	3,127.81	994.99		177,379.89
9	1934	177,379.87	37,195.60	1,265.00	170.00		213,480.69
10	1935	213,480.69	37,417.68				250,898.37
11	1936	250,898.37	37,844.56	5,523.96	2,598.97		285,817.96
12	1937	285,817.96	37,785.40	6,021.47	946.00		318,528.89
13	1938	318,528.89	38,066.89	480.00	150.00	$ 118.35	356,145.13
14	1939	356,145.13	37,965.67	539.05	91.50		393,663.25
			$423,735.59	$37,477.38	$7,523.39	$ 118.35	

Notes:

(1) See Schedule No. 6 for reconciliation of original costs retired, as adjusted, with original costs retired, per books.

(2) See Schedule No. 7 for reconciliation of salvage received, as adjusted, with salvage received, per books.

EXHIBIT 201

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Docket G-124

Schedule No. 6

COLORADO-WYOMING GAS COMPANY
RETIREMENTS OF PLANT COSTS CHARGED TO RESERVE FOR DEPRECIATION
PER BOOKS AND AS ADJUSTED

Line No.	Examiner's Entry No.	Particulars	1939	1938	1937	1936	1934	1933	1932	1931	1930	1929
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
1		Retirements of Plant Costs charged to reserve for depreciation, per books	$539.05	$480.00	$3,195.41	$6,472.38	$1,265.00	$3,240.69	$1,140.98	$21,944.21	$53.31	$3,522.34
2	202	To correct for 5% engineering fees retired through the reserve						(112.78)	(32.33)	(948.97)		
3	213	To reverse company's entry V.V. 1378								(21,944.21)		
4	214	To eliminate 5% engineering fees from Entry No. 213								948.97		
5	215	To restate transfer of equipment from Wellington compressing station to Arvada compressing station								14,206.97		
6	217	To adjust for interest during construction retired in connection with transfer of equipment from Wellington compressing station to Arvada compressing station								126.07		
7	218	To retire non-useful property at Wellington compressing station			2,956.80				147.30	550.14		
8	219	To record retirement of cooling tower at Wellington compressing station							1,007.31			
9	222	To record retirement of meter vault abandoned				61.65						
10	225	To adjust for excess retirement of transportation equipment			(25.74)							
11	401	To adjust land costs retired through reserve			(106.00)							
12		Retirements of plant costs charged to Reserve for Depreciation, as adjusted	$539.05	$480.00	$6,021.47	$6,523.96	$1,265.00	$3,127.81	$2,263.26	$14,681.18	$53.31	$3,522.34
		Details of cost retired (as adjusted) by accounts:										
	Respondent's Account No.	Account Title	Total									
13	1004	Transmission Plant	$ 1,817.18		$480.00		$ 249.10		$ 626.08	$ 462.00		
14	1014	Compressing Stations	24,427.45	$360.00		$2,956.80	35,274.86			1,154.61	$14,681.18	
15	1008	Transportation Equipment	11,000.59			3,064.67		$1,265.00	2,501.73	646.65		$3,522.34
16	1008	Office Furniture and Equipment	232.36	179.05							$53.31	
		Total	$37,477.38	$539.05	$480.00	$6,021.47	$5,523.96	$1,265.00	$3,127.81	$2,263.26	$14,681.18	$53.31	$3,522.34

( ) indicate red figures.

EXHIBIT 201
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Docket G-124

COLORADO-WYOMING GAS COMPANY
SALVAGE CREDITED TO RESERVE FOR DEPRECIATION
PER BOOKS AND AS ADJUSTED

Schedule No. 7

Line No.	Examiner's Entry No.	Particulars	1939	1938	1937	1936	1935	1934	1933	1932	1931	1930	1929
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1		Salvage per reserve for depreciation, per books	$91.50	$150.00	$965.00	$2,598.97	($900.00)	$170.00	$994.99	$532.08	$1,800.00	$46.00	$1,091.85
2	215	Additional salvage on transportation equipment retired											4.00
3	401	To adjust land costs retired through reserve			(20.00)								
4	-	Adjustment of 1931 salvage entered on books in 1935					900.00				(900.00)		
5		Salvage, as adjusted	$91.50	$150.00	$945.00	$2,598.97		$170.00	$994.99	$532.08	$ 900.00	$46.00	$1,095.85
		Details of above salvage figures (as adjusted) by accounts:											
	Respondent's Account No.	Account Title	Total										
6	1004	Transmission Plant	$1,072.19		$150.00		$ 98.97			$409.99	$413.23		
7	1014	Compressing Stations	3,482.85	$64.00			2,500.00				18.85	$ 900.00	
8	1009	Transportation Equipment	2,895.85			$945.00			$170.00	585.00	100.00		$1,095.85
9	1008	Office Furniture & Equipment	72.60	27.50								$46.00	
10		Total	$7,523.50	$91.50	$150.00	$945.00	$2,598.97		$170.00	$994.99	$532.08	$ 900.00	$46.00	$1,095.85

( ) indicate red figures.

EXHIBIT 201
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Docket G-124

Statement B-1
Sheet 1 of 1

COLORADO-WYOMING GAS COMPANY
CONDENSED INCOME STATEMENT PER BOOKS AND AS ADJUSTED
YEAR 1939

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Line No.	Description	Per Books (Note 1)	Examiner's Adjustments Debit	Examiner's Adjustments Credit	As Adjusted	Suspended for Further Consideration of the Commission	Income Statement Suspension Number
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Operating Revenues	$828,941.30			$828,941.30		
	Operating Revenue Deductions:						
2	Gas Purchased for Resale	$498,103.04			$498,103.04	$498,103.04	A
3	Operation and General	79,665.16		$16,860.52	62,804.64	9,726.04	B and D
4	Maintenance	5,059.68			5,059.68		
5	Depreciation	88,000.00	$37,965.67	88,000.00	37,965.67		
6	Taxes - General	28,856.86	1,842.30	150.00	29,949.16		
7	Taxes - Federal Income	24,331.96		121.41	24,210.55	24,210.55	E
8	Taxes - Colorado State Income	3,300.00		354.13	2,945.87	2,945.87	F
9	Total Operating Revenue Deductions	$727,316.74	$39,807.97	$45,486.06	$721,038.65	$534,987.50	
10	Utility Income	$161,624.56	$39,807.97	$45,486.06	$167,902.75		
	Other Income:						
11	Interest Received on Advances to Public Service Company of Colorado	$ 5,900.16			$ 5,900.16		
12	Gross Income	$167,524.72	$39,807.97	$45,486.06	$173,802.91		
	Income Deductions:						
13	Other Interest Charges	$ 602.84			$ 602.84		
14	Miscellaneous Income Deductions		$ 2,270.73	$ 477.00	2,073.73		
15	Total Income Deductions	$ 602.84	$ 2,270.73	$ 477.00	$ 2,676.57		
16	Net Income	$166,921.88	$41,758.70	$45,963.06	$171,126.34		

Note: (1) Subject to minor reclassifications.

EXHIBIT 202

Docket G-124

Statement B-2
Sheet 1 of 1

COLORADO-WYOMING GAS COMPANY
CONDENSED INCOME STATEMENT PER BOOKS AND AS ADJUSTED
YEAR 1938

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Line No.	Description (1)	Per Books (Note 1) (2)	Examiner's Adjustments Debit (3)	Examiner's Adjustments Credit (4)	As Adjusted (5)	Suspended for Further Consideration of the Commission (6)	Income Statement Suspension Number (7)
1	Operating Revenues	$750,116.67			$750,116.67		
	Operating Revenue Deductions:						
2	Gas Purchased for Resale	$429,070.46	$ 7.25		$429,077.71	$429,077.71	A
3	Operation and General	60,600.14	457.43	$ 1,687.09	59,370.48	7,934.22	B and D
4	Maintenance	5,315.93			5,315.93		
5	Depreciation	28,000.00	38,066.59	28,000.00	38,066.59		
6	Taxes - General	30,961.36		1,238.11	29,723.25		
7	Taxes - Federal Income	25,595.73			25,595.73	25,595.73	E
8	Taxes - Colorado State Income	3,185.68			3,185.68	3,185.68	F
9	Total Operating Revenue Deductions	$582,729.30	$38,531.27	$30,925.20	$590,335.37	$465,793.34	
10	Utility Income	$167,387.37	$38,531.27	$30,925.20	$159,781.30		
	Other Income:						
11	Interest Received on Advances to Public Service Company of Colorado	$ 5,897.74			$ 5,897.74		
12	Gross Income	$173,285.11	$38,531.27	$30,925.20	$165,679.04		
	Income Deductions:						
13	Miscellaneous Income Deductions		$ 2,714.09		$ 2,714.09		
14	Net Income	$173,285.11	$41,245.36	$30,925.20	$162,964.95		

Note: (1) Subject to minor reclassifications and application of surplus adjustments to period affected.

EXHIBIT 202

Docket G-121

Statement H-5
Sheet 1 of 2

COLORADO-WYOMING GAS COMPANY
CONDENSED INCOME STATEMENT PER BOOKS AND AS ADJUSTED
YEAR 1957

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Line No.	Description	Per Books (Note 1)	Examiner's Adjustments Debit	Examiner's Adjustments Credit	As Adjusted	Suspended for Further Consideration of the Commission	Income Statement Suspension Number
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Operating Revenues	$734,068.52			$734,068.52		
	Operating Revenue Deductions:						
2	Gas Purchased for Resale	$449,927.09			$449,927.09	$449,927.09	A
3	Operation and General	64,531.65		$ 4,608.66	59,922.99	8,406.01	C and D
4	Maintenance (Note 2)	10,990.10			10,990.10		
5	Depreciation	28,000.00	$7,785.40	28,000.00	37,785.40		
6	Taxes - General	30,454.46		1,637.86	28,816.60		
7	Taxes - Federal Income	31,271.77		8,287.23	22,984.54	22,984.54	B
8	Taxes - Colorado State Income	1,215.56			1,215.56	1,215.56	F
9	Miscellaneous Nonrecurring Charges		3,011.89		3,011.89		
10	Total Operating Revenue Deductions	$610,390.63	$10,796.69	$42,533.75	$610,653.57	$482,533.20	
11	Utility Income	$167,677.89	$40,796.69	$42,533.75	$169,414.95		
	Other Income:						
12	Interest Received on Advances to Public Service Company of Colorado	$ 5,154.29			$ 5,154.29		
13	Gross Income	$172,832.18	$40,796.69	$42,533.75	$174,569.24		
	Income Deductions:						
14	Interest Charged to Construction - Cr.			$ 60.01	$ (60.01)		
15	Miscellaneous Income Deductions		$ 3,275.37		$ 3,275.37		
16			$ 3,275.37	$ 60.01	$ 3,215.36		
17	Net Income	$172,832.18	$44,072.06	$42,593.76	$171,353.88		

Note: (1) Subject to minor reclassifications and application of surplus adjustments to period affected.

(2) Includes $5,578.37 extraordinary maintenance of transmission lines in the opinion of the Bureau of Engineering.

EXHIBIT 202

Docket G-1284

Statement H-4
Sheet 1 of 4

COLORADO-WYOMING GAS COMPANY
EXPENSES SUSPENDED FOR PURPOSE CONSIDERATION OF THE COMMISSION
YEARS 1957, 1958 AND 1959

Line No.	Income Statement Suspension Reference	Description	Year 1959 (3)	Year 1958 (4)	Year 1957 (5)
1	A	Gas Purchased for Resale	$468,103.04	$459,077.71	$449,987.09
		Practically all of the Respondent's gas requirements is purchased from Colorado Interstate Gas Company. Since the latter is a respondent in this proceeding (Docket G-1284) it is deemed proper to suspend for further consideration the cost of all gas purchased for resale. (Details contained in Schedules B-19, B-20 and B-21 and their related subschedules.)			
	B	Apportionment of Overhead Expenses of Petroleum Advisers, Inc.:			
2		Total of monthly charges	$ 3,000.06	$ 2,557.87	
3		Year-end adjustments		14.31	
4		Miscellaneous income credits	(.17)	(.06)	
5		Net charged to expense by Colorado-Wyoming Gas Company, as adjusted	$ 2,999.89	$ 2,572.12	

Petroleum Advisers, Inc., is a mutual service company rendering certain services to a group of companies consisting of the following, according to an agreement dated January 1, 1938 between it and Colorado-Wyoming Gas Company in respect to a subscription for stock in the service company (Appendix No. 1 of this exhibit):

Colorado-Wyoming Gas Company
Arkansas Fuel Oil Company
Cities Service Oil Company (Del.)
Cities Service Oil Company, Limited
Cities Service Oil Company (Pa.)
Cities Service Gas Company
Penn-York Natural Gas Company

The service contract dated January 1, 1938 (Appendix No. 2 of this exhibit) provides that Petroleum Advisers, Inc., will render service to its member companies at "cost to it of rendering same." Direct charges are required to be made against the member companies insofar as costs can be identified and related to particular transactions without excessive effort and expense. These expenses of Petroleum Advisers, Inc., which cannot be identified as direct charges are, according to the service contract dated January 1, 1938, to be apportioned among the various member companies "based upon the ratio which, for the month preceding the current month, the gross operating revenues of each of such companies bears to the aggregate gross operating revenues of all such companies. In determining gross operating revenues, there shall be deducted all payments made for purchases for resale purposes from any other company having an agreement with Advisers similar hereto."

EXHIBIT 202

COLORADO-WYOMING GAS COMPANY
EXPENSES SUSPENDED FOR FURTHER CONSIDERATION OF THE COMMISSION
YEARS 1937, 1938 AND 1939

KLS Rea 10/24/40	Line No.	Income Statement Suspension Reference (1)	Description (2)	Year 1939 (3)	Year 1938 (4)	Year 1937 (5)
		B (Cont'd)	Income Statement Suspension B consists entirely of expenses apportioned to Colorado-Wyoming Gas Company over and above the direct charges made by Petroleum Advisers, Inc., to Colorado-Wyoming Gas Company for the years 1938 and 1939, respectively.			

The Respondent has obtained from Petroleum Advisers, Inc., and furnished the Examiner certain information relating to the apportionment of the expenses in question. This information is contained in Appendix No. 3 of this exhibit. Sheet A thereof indicates that for the year 1938 a total of $454,082.83 was apportioned by Petroleum Advisers, Inc., to all of its member companies. Out of this total the amount of $2,557.87 was charged to Colorado-Wyoming Gas Company, representing only a fraction of 1% of the total. For the year 1939 the total expenses apportioned were $449,456.81, Colorado-Wyoming Gas Company being charged with $3,000.06, or less than 1% of the total. Sheet B contained in Appendix No. 3 shows the details of expenses apportioned by Petroleum Advisers, Inc., to member companies for the years 1938 and 1939. It will be noted that salaries is the largest item of expense and it, together with expenses of officers and employees, rents, and special services, constitutes substantially all of the expenses which were apportioned.

On sheet C of Appendix No. 3, Petroleum Advisers, Inc., has made a brief statement concerning the salaries and duties of its employees. It may be questioned whether or not it is equitable to apportion salaries of the following employees of Petroleum Advisers, Inc., who appear to be engaged primarily in activities benefiting member oil companies, against the ratepayers of the Colorado-Wyoming Gas Company:

D. F. Leary, petroleum engineer and assistant to Mr. Sinsheimer (in charge of production and pipeline activities)
L. C. Snyder, consulting economic geologist specializing in oil
V. R. Garfias, in charge of foreign operations
H. V. Frusauff, in charge of manufacturing and distribution
W. W. Lowe, in charge of refinery construction and operation
A. P. Frame, refining engineer and assistant to Mr. Lowe
B. B. Mears, lubrication engineer
L. G. Coleman, manager of headquarters sales department
E. McEldowney, in charge of advertising

EXHIBIT 202

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COLORADO-WYOMING GAS COMPANY
EXPENSES SUSPENDED FOR FURTHER CONSIDERATION OF THE COMMISSION
YEARS 1937, 1938 AND 1939

KLS Item 10/24/40	Line No.	Income Statement Suspension Reference (1)	Description (2)	Year 1939 (3)	Year 1938 (4)	Year 1937 (5)
		B (Cont'd)	The Examiner recommends allowance of only that portion of the charges in question which the Commission finds reasonable and necessary in conducting gas utility operations of the Colorado-Wyoming Gas Company.			
	6	C	Management Fees - Public Service Company of Colorado			$ 4,950.65
	7		Less: Amount Classified as Nonrecurring Expense per Examiner's Adjusting Entry No. 128 (Schedule B-15)			2,164.64
	8		Net Amount Suspended for Further Consideration			$ 2,786.01
			Since the Examiner has adjusted this item to an amount equal to the average of the net charges for 1938 and 1939 by Petroleum Advisers, Inc., for apportionment of overhead expenses, Suspension C is subject to the comments pertaining to Suspension B, above.			
		D	Legal Fees			
			Retainer Fees:			
	9		Lee, Shaw and McCreery, Denver, Colorado	$ 5,000.00	$ 5,000.00	$ 5,000.00
	10		Wilfrid O'Leary, Cheyenne, Wyoming	100.00	100.00	100.00
			Other Charges from Lee, Shaw & McCreery:			
	11		Re Wyoming and Colorado tax survey and assessments			540.00
	12		Re investigation and development of Wyoming natural gas supplies			732.00
	13		Re tax assessments and rate case	1,231.00		
	14		Sundry expense charges	375.05	862.10	
	15		Expenses charged by Wilfrid O'Leary	22.10		
	16		Total Legal Fees Per Books	$ 6,728.15	$ 5,962.10	$ 6,372.00
			Less: Reclassification per Examiner's Adjusting Entry No. 119 (See Line 12 above)			732.00
	17		Net Amount Suspended for Further Consideration	$ 6,728.15	$ 5,962.10	$ 5,640.00
	18					

Appendix No. 4 of this exhibit is a statement obtained from the Respondent showing a detail of the services performed for it by the legal firm of Lee, Shaw & McCreery during the year 1938. It appears that services detailed in Appendix No. 4 were rendered for a retainer fee of $5,000. The Examiner of Accounts under date of April 13, 1940 requested in writing a similar itemization for the year 1939 which the Respondent has not furnished.

Appendix No. 4 shows a descriptive analysis of services performed during 1938 related to a total of 879 hours.

The Examiner raises the question for the Commission's consideration of the reasonableness of a legal retainer fee of $5,000 per year for a company of the size of Colorado-Wyoming Gas Company.

EXHIBIT 20

Docket G-1[illegible]

Statement [illegible]
Sheet 4 of 4

COLORADO-WYOMING GAS COMPANY
EXPENSES SUSPENDED FOR FURTHER CONSIDERATION OF THE COMMISSION
YEARS 1957, 1958 AND 1959

KLS hea 10/25/40	Line No.	Income Statement Suspension Reference (1)	Description (2)	Year 1959 (3)	Year 1958 (4)	Year 1957 (5)
		D (Cont'd)	It is further noted that Lee, Shaw & McCreery were paid an additional $1,251.00, related to 1959, pertaining to tax assessments and rate case. As a result of Respondent's failure to furnish an itemization of services performed by Lee, Shaw & McCreery during 1959, as requested, the Examiner has been unable to determine the reasons for or nature of the charges in question. A retainer fee of $7,500, in addition to the regular fee of $5,000.00 and the above special charge of $1,251.00, was paid to Lee, Shaw & McCreery in 1959 for services to be rendered in the rate case. The charge of $7,500 was removed from 1959 expenses and transferred to deferred debits in the balance sheet by Examiner's entry No. 105 (Schedule K-13)			
	19	E	Federal Income Tax	$ [illegible]	$ [illegible]	$ [illegible]
			Income taxes for 1957, 1958, and 1959, as adjusted, have been suspended for further study and consideration by the Commission and its staff for the reason that the income received by the Respondent and which constituted the basis for assessment of its income taxes, may, as a result of this proceeding, be found to have been in excess of a fair return. The Examiner recommends that expenses assessable against the ratepayers include, with respect to income taxes, only such an amount as would represent the necessary taxes required to be paid based upon the income which the Commission determines it is proper for the Company to earn.			
	20	F	Colorado State Income Tax	$ [illegible]	$ [illegible]	$ 1,215.96
			The comments above under Suspension E also pertain to Suspension F.			
	21		Totals	$[illegible]	$[illegible]	$[illegible]

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EXHIBIT 202

Docket G-124

COLORADO-WYOMING GAS COMPANY
CONDENSED INCOME AND SURPLUS STATEMENT - PER BOOKS, SUBJECT TO MINOR RECLASSIFICATIONS AND APPLICATION OF SURPLUS ADJUSTMENTS TO PERIOD AFFECTED - YEARS 1925 TO 1939, INCLUSIVE

Line No.	Classification	Year 1939	Year 1938	Year 1937	Year 1936	Year 1935	Year 1934	Year 1933	Year 1932	Year 1931	Year 1930
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	Operating Revenues	$828,941.30	$750,116.67	$784,068.52	$709,220.69	$603,399.88	$542,343.48	$585,238.02	$656,172.78	$655,621.69	$571,889.70
	Operating Revenue Deductions:										
2	Gas Purchased for Resale	$498,103.04	$429,070.46	$449,927.09	$407,120.98	$344,742.82	$283,585.32	$298,414.12	$321,754.42	$308,328.[illegible]	$245,386.27
3	Operation and General	79,665.16	60,600.14	64,531.65	56,790.96	52,290.85	55,210.26	54,306.08	64,188.46	64,650.26	46,364.24
4	Maintenance	5,059.62	5,315.93	10,990.10	5,218.28	4,360.05	2,470.24	3,446.14	4,482.64	5,521.69	2,658.46
5	Depreciation	28,000.00	28,000.00	28,000.00	48,000.00	48,000.00	48,000.00	48,000.00	32,183.00	56,672.02	66,000.00
6	Taxes - General	28,856.86	30,961.36	30,464.46	23,394.53	22,423.73	22,529.29	19,339.79	17,795.02	17,034.68	14,716.56
7	Taxes - Federal Income	24,331.96	25,595.73	31,271.77	18,830.48	12,259.51	12,784.71	22,207.44	28,692.68	16,572.25	20,995.93
8	Taxes - Colorado State Income	3,300.00	3,185.68	1,215.36							
9	Miscellaneous Non-recurring Charges				2,582.05	5,397.10	191.25	177.29			
10	Total Operating Revenue Deductions	$567,316.64	$582,789.30	$616,350.83	$561,937.28	$489,474.06	$424,771.07	$445,890.86	$469,396.22	$468,779.41	$396,121.45
11	Utility Income	$161,624.66	$167,387.37	$167,677.89	$147,283.47	$113,925.82	$117,572.35	$139,347.16	$186,776.56	$186,842.28	$175,768.25
	Other Income:										
12	Interest Received on Advances to Public Service Company of Colorado	5,900.16	5,897.74	5,154.29	6,650.74	2,003.18	1,428.07	688.31	3,573.19	315.91	
13	Gross Income	$167,524.82	$173,285.11	$172,832.18	$153,934.21	$115,929.00	$119,000.42	$140,035.47	$190,349.75	$187,158.19	$175,768.25
	Income Deductions:										
14	Interest to Public Service Company of Colorado						$ 91.50	$ 938.22			
15	Interest to Henry L. Doherty & Company									$ 45,321.40	$ 67,710.33
16	Other Interest Charges	$ 602.84			$ .90						
17	Interest Charged to Construction - Cr.								$(12,458.04)	(32,510.00)	(43,141.92)
18	Total Income Deductions	$ 602.84			$ .90		$ 91.50	$ 938.22	$(12,458.04)	$ 12,811.40	$ 24,568.41
19	Net Income	$166,921.98	$173,285.11	$172,832.18	$153,933.31	$115,929.00	$118,908.92	$139,097.25	$202,807.79	$174,346.79	$151,199.84
	Surplus Accounts										
20	Surplus at Beginning of Year	$ 26,154.50	$ 32,869.39	$ 30,037.21	$ 16,103.90	$ 27,674.90	$ 48,765.98	$ 82,168.73	$166,860.94	$410,938.48	$259,738.64
21	Net Income, as per line 19 above	166,921.98	173,285.11	172,832.18	153,933.31	115,929.00	118,908.92	139,097.25	202,807.79	174,346.79	151,199.84
22	Surplus Arising from Forgiveness of Indebtedness by Henry L. Doherty & Co.									1,139,075.67	
23	Subtotal	$193,076.48	$206,154.50	$202,869.39	$170,037.21	$143,603.90	$167,674.90	$221,265.98	$369,668.73	$1,724,360.94	$410,938.48
	Deduct:										
	Dividends Paid:										
24	In Cash	170,000.00	180,000.00	170,000.00	140,000.00	127,500.00	140,000.00	172,500.00	287,500.00	57,500.00	
25	In Stock									1,500,000.00	
26	Surplus at End of Year	$ 23,076.48	$ 26,154.50	$ 32,869.39	$ 30,037.21	$ 16,103.90	$ 27,674.90	$ 48,765.98	$ 82,168.73	$166,860.94	$410,938.48

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Statement B-5
Sheet 1 of 1

EXHIBIT 202 8

COLORADO-WYOMING GAS COMPANY
CONDENSED INCOME AND SURPLUS STATEMENT - PER BOOKS, SUBJECT TO MINOR RECLASSIFICATIONS AND APPLICATION OF SURPLUS ADJUSTMENTS TO PERIOD AFFECTED - YEARS 1925 TO 1939, INCLUSIVE

Year 1939 (2)	Year 1938 (3)	Year 1937 (4)	Year 1936 (5)	Year 1935 (6)	Year 1934 (7)	Year 1933 (8)	Year 1932 (9)	Year 1931 (10)	Year 1930 (11)	Year 1929 (12)	Year 1928 (13)	Year 1927 (14)	Year 1926 (15)	Month of December 1925 (16)
$888,941.30	$750,116.67	$784,068.52	$709,220.69	$603,399.88	$542,343.42	$525,238.02	$656,172.78	$655,621.69	$571,889.70	$394,187.37	$434,644.35	$166,289.51	$83,235.82	$ 958.92
$198,103.04	$129,070.16	$149,927.09	$107,120.98	$344,742.82	$283,585.32	$898,414.12	$321,754.42	$308,328.51	$245,386.27	$172,047.81	$217,654.67	$ 59,281.61	$24,144.53	$ 142.44
79,665.16	60,600.14	64,531.65	56,790.96	52,290.85	55,210.26	54,306.08	64,488.46	64,650.26	46,364.24	37,291.16	43,438.91	24,822.68	12,039.23	
5,059.62	5,315.93	10,990.10	5,218.28	4,360.05	2,470.24	3,146.14	4,482.64	5,521.69	2,658.45	3,581.46	2,001.65	308.16	252.81	
28,000.00	28,000.00	28,000.00	48,000.00	48,000.00	48,000.00	48,000.00	32,183.00	56,672.02	66,000.00	25,749.00	23,070.00	17,895.00	21,244.81	905.67
28,856.86	30,961.36	30,464.46	23,394.53	22,423.73	22,529.29	19,339.79	17,795.02	17,034.68	14,716.56	8,859.47	6,360.43	7,999.21	1,844.21	
24,331.96	25,595.73	31,271.77	18,830.48	12,259.51	12,784.71	22,207.44	28,692.68	16,572.25	20,995.93	13,945.54	14,487.21	4,938.94	921.59	
3,300.00	3,185.68	1,215.56												
			2,582.05	5,397.10	191.25	177.89								
$367,316.64	$282,769.30	$316,390.63	$261,937.22	$489,474.06	$424,771.07	$625,690.66	$469,396.22	$468,779.41	$396,121.45	$261,474.44	$307,012.87	$115,245.60	$60,447.18	$1,248.11
$161,624.66	$167,387.37	$167,677.89	$147,283.47	$113,985.82	$117,572.35	$139,347.16	$186,776.56	$186,842.28	$175,768.25	$132,712.93	$127,631.48	$ 51,043.91	$22,788.64	$ (389.19)
5,900.16	5,897.74	5,154.29	6,650.74	2,003.18	1,428.07	688.31	3,573.19	315.91						
$167,524.82	$173,285.11	$172,832.18	$153,934.21	$115,989.00	$119,000.42	$140,035.47	$190,349.75	$187,158.19	$175,768.25	$132,712.93	$127,631.48	$ 51,043.91	$22,788.64	$ (389.19)
orado					$ 91.50	$ 938.22								
								$ 45,321.40	$ 67,710.33	$ 31,867.24	$ 21,538.07	$ 20,230.80	$14,883.64	$ 486.31
$ 602.84			$ .90							14.13				
							$(12,458.04)	(32,510.00)	(43,141.92)	(14,184.75)				(486.31)
$ 602.84			$ .90		$ 91.50	$ 938.22	$(12,458.04)	$ 12,811.40	$ 24,568.41	$ 17,696.62	$ 21,538.07	$ 20,230.80	$14,883.64	
$166,921.98	$173,285.11	$172,832.18	$153,933.31	$115,989.00	$118,908.92	$139,097.25	$202,807.79	$174,346.79	$151,199.84	$115,316.31	$106,093.41	$ 30,813.11	$ 7,905.00	$ (389.19)
$ 26,154.50	$ 32,869.39	$ 30,037.21	$ 16,103.90	$ 27,674.90	$ 48,765.98	$ 82,168.73	$166,860.94	$410,938.48	$259,738.64	$144,422.33	$ 38,328.92	$ 7,515.81	$ (389.19)	
166,921.98	173,285.11	172,832.18	153,933.31	115,989.00	118,908.92	139,097.25	202,807.79	174,346.79	151,199.84	115,316.31	106,093.41	30,813.11	7,905.00	$ (389.19)
								1,139,075.67						
$193,076.48	$206,154.50	$202,869.39	$170,037.21	$143,663.90	$167,674.90	$221,265.98	$369,668.73	$1,724,360.94	$410,938.48	$259,738.64	$144,422.33	$ 38,328.92	$ 7,515.81	
170,000.00	180,000.00	170,000.00	140,000.00	127,500.00	140,000.00	172,500.00	287,500.00	57,500.00						
								1,500,000.00						
$ 23,076.48	$ 26,154.50	$ 32,869.39	$ 30,037.21	$ 16,103.90	$ 27,674.90	$ 48,765.98	$ 82,168.73	$166,860.94	$410,938.48	$259,738.64	$144,422.33	$ 38,328.92	$ 7,515.81	$ (389.19)

Docket G-124

COLORADO-WYOMING GAS COMPANY

CONDENSED INCOME AND SURPLUS STATEMENT - AS ADJUSTED FOR YEARS 1937, 1938 AND 1939; PER BOOKS, YEARS 1925 TO 1936 INCLUSIVE
SUBJECT TO RECLASSIFICATIONS, APPLICATION OF SURPLUS ADJUSTMENTS TO PERIOD AFFECTED, RESTATEMENT OF DEPRECIATION AND MINOR ADJUSTMENTS

Line No.	Classification	Year 1939	Year 1938	Year 1937	Year 1936	Year 1935	Year 1934	Year 1933	Year 1932	Year 1931	Year 1930	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	
4	Operating Revenues	$828,941.30	$750,116.67	$784,068.52	$709,280.69	$603,399.86	$542,343.42	$585,238.02	$656,172.78	$ 678,621.69	$571,889.70	$394,
	Operating Revenue Deductions											
2	Gas Purchased for Resale	$498,103.04	$489,077.71	$449,927.09	$407,120.92	$341,742.82	$283,585.32	$238,414.12	$321,754.42	$ 308,328.51	$245,386.27	$172,
3	Operation and General	62,804.64	59,370.48	59,982.99	56,790.96	52,290.85	55,210.26	54,306.08	64,458.46	64,650.26	49,934.24	48,
4	Maintenance	5,059.62	5,315.93	10,990.10	5,218.28	4,360.05	8,470.24	3,446.14	4,482.64	9,032.42	2,658.45	3,
5	Depreciation	37,965.67	38,066.39	37,785.40	37,644.58	37,417.68	37,195.80	38,113.84	38,437.24	41,280.85	34,487.33	18,
6	Taxes - General	29,549.16	29,723.85	28,816.60	25,394.53	22,423.73	22,589.29	19,339.79	17,795.02	17,113.88	14,716.56	8,
7	Taxes - Federal Income	24,210.55	25,595.73	22,984.54	21,337.46	14,514.63	15,064.40	22,207.44	28,692.68	16,572.25	20,995.93	13,
8	Taxes - Colorado State Income	2,545.87	3,185.68	1,215.56								
9	Miscellaneous Nonrecurring Charges			3,011.29	2,582.05	5,397.10	191.85	177.29				
10	Total Operating Revenue Deductions	$661,038.52	$650,335.37	$614,693.57	$556,288.78	$481,176.86	$416,249.56	$376,004.70	$475,850.46	$ 456,978.17	$368,178.76	$265,
11	Utility Income	$167,902.75	$159,781.30	$169,374.95	$152,991.91	$122,223.02	$126,096.86	$149,233.32	$180,322.32	$ 198,643.52	$203,710.92	$129,
	Other Income											
12	Interest Received on Advances to Public Service Company of Colorado	$ 5,900.16	$ 5,897.74	$ 5,154.29	$ 6,650.74	$ 2,003.18	$ 1,428.07	$ 688.31	$ 3,573.19	$ 315.91		
13	Gross Income	$173,802.91	$165,679.04	$174,529.24	$161,582.65	$124,226.20	$127,524.93	$149,921.63	$184,095.51	$ 198,959.43	$203,710.92	$129,
	Income Deductions											
14	Interest to Public Service Company of Colorado						$ 91.50	$ 938.22				
15	Interest to Henry L. Doherty & Co.									$ 45,321.40	$ 67,710.33	$ 31,
16	Other Interest Charges	$ 602.84			$ .90							
17	Interest Charged to Construction - Cr.			$ (62.71)	(38.99)	$ (203.44)	(1.66)			(891.17)	(2,439.48)	(8,
18	Miscellaneous Income Deductions	2,073.73	$ 2,714.09	3,275.37								
19	Total Income Deductions	$ 2,676.57	$ 2,714.09	$ 3,212.66	$ (38.09)	$ (203.44)	$ 89.84	$ 938.22		$ 45,030.23	$ 65,270.85	$ 23,
20	Net Income	$171,126.34	$162,964.95	$171,316.58	$161,620.74	$124,429.64	$127,435.09	$148,983.41	$184,095.51	$ 153,929.20	$138,440.07	$105,
	Surplus Account											
21	Surplus at Beginning of the Year	$ 26,208.38	$ 43,243.43	$ 41,887.55	$ 20,266.81	$ 23,337.17	$ 35,902.08	$ 99,418.67	$162,823.16	$ 427,318.29	$288,878.22	$183,
22	Net Income, as per line 20, above	171,126.34	162,964.95	171,316.58	161,620.74	124,429.64	127,435.09	148,983.41	184,095.51	153,929.20	138,440.07	105,
23	Surplus Arising from Forgiveness of Indebtedness by H. L. Doherty & Co.									1,139,075.67		
24	Subtotal	$197,334.72	$206,208.38	$213,243.43	$181,887.55	$147,766.81	$163,337.17	$248,402.08	$346,918.67	$1,720,325.16	$427,318.29	$288,
	Deduct:											
	Dividends Paid											
25	In Cash	$170,000.00	$180,000.00	$170,000.00	$140,000.00	$127,500.00	$140,000.00	$174,500.00	$287,500.00	$ 57,500.00		
26	In Stock									1,500,000.00		
27	Surplus at End of the Year	$ 27,334.72	$ 26,208.38	$ 43,243.43	$ 41,887.55	$ 20,266.81	$ 23,337.17	$ 35,902.08	$ 59,418.67	$ 162,823.16	$427,318.29	$288,

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Statement B-6
Sheet 1 of 1

EXHIBIT 202 9

COLORADO-WYOMING GAS COMPANY
CONDENSED INCOME AND SURPLUS STATEMENT - AS ADJUSTED FOR YEARS 1937, 1938 AND 1939; PER BOOKS, YEARS 1925 TO 1936 INCLUSIVE
SUBJECT TO RECLASSIFICATIONS, APPLICATION OF SURPLUS ADJUSTMENTS TO PERIOD AFFECTED, RESTATEMENT OF DEPRECIATION AND MINOR ADJUSTMENTS

Year 1939 (2)	Year 1938 (3)	Year 1937 (4)	Year 1936 (5)	Year 1935 (6)	Year 1934 (7)	Year 1933 (8)	Year 1932 (9)	Year 1931 (10)	Year 1930 (11)	Year 1929 (12)	Year 1928 (13)	Year 1927 (14)	Year 1926 (15)	Month of December 1925 (16)
$826,941.30	$750,116.67	$784,068.52	$709,280.69	$603,399.88	$542,343.42	$525,238.02	$656,172.78	$ 695,621.69	$571,889.70	$394,187.37	$434,644.35	$166,289.51	$83,235.82	$958.92
$496,103.04	$489,077.71	$469,927.09	$407,120.92	$344,742.82	$283,585.32	$238,414.12	$321,754.42	$ 308,328.51	$245,386.27	$172,047.81	$217,654.67	$ 59,281.61	$24,444.53	$442.44
62,804.64	59,370.48	59,982.99	56,790.96	52,290.85	55,210.26	54,306.08	64,486.46	64,650.26	49,934.24	48,604.22	43,438.91	24,822.68	12,281.39	
5,059.62	5,315.93	10,990.10	5,218.28	4,360.05	2,470.24	3,446.14	4,482.64	9,032.42	2,658.45	3,581.46	2,001.65	308.16	252.81	
37,965.67	38,066.59	37,785.40	37,814.58	37,417.68	37,195.80	38,113.84	38,437.24	41,280.85	34,487.33	18,033.53	14,636.40	8,081.03	4,389.65	
29,849.16	29,723.25	28,816.60	23,394.53	22,423.73	22,589.29	19,399.79	17,795.02	17,113.88	14,716.56	8,859.47	6,360.43	7,999.21	1,814.21	
24,210.55	25,595.73	22,984.54	21,337.46	14,514.63	15,064.40	22,207.44	28,692.68	16,572.25	20,995.93	13,945.54	14,487.21	4,938.94	921.59	
2,945.87	3,185.68	1,215.56												
		3,011.29	2,582.05	5,397.10	191.25	177.29								
$661,038.52	$650,335.37	$614,692.27	$554,466.78	$481,176.86	$416,246.58	$376,064.70	$475,650.46	$ 456,978.17	$368,178.78	$265,072.05	$298,579.27	$105,431.63	$43,854.18	$442.44
$167,902.75	$159,781.30	$169,444.95	$154,931.91	$122,823.02	$126,096.86	$149,233.32	$180,522.32	$ 198,643.52	$203,710.92	$129,115.34	$136,065.08	$ 60,857.88	$39,401.64	$516.48
$ 5,900.16	$ 5,897.74	$ 5,154.29	$ 6,650.74	$ 2,003.18	$ 1,428.07	$ 688.31	$ 3,573.19	$ 315.91						
$173,802.91	$165,679.04	$174,599.24	$161,582.65	$124,826.20	$127,524.93	$149,921.63	$184,095.51	$ 198,959.43	$203,710.92	$129,115.34	$136,065.08	$ 60,857.88	$39,401.64	$516.48
					$ 91.50	$ 938.22								
$ 602.84		$ (62.71)	$ .90	$ (203.44)	(1.66)			$ 45,321.40	$ 67,710.33	$ 31,867.24	$ 21,538.07	$ 20,230.80	$14,883.64	$486.31
2,073.73	$ 2,714.09	3,275.37	(38.99)					(891.17)	(2,439.48)	14.13 (8,218.39)	(5.46)	(831.02)	(2,400.81)	(486.31)
$ 2,676.57	$ 2,714.09	$ 3,212.66	$ (38.09)	$ (203.44)	$ 89.84	$ 938.22		$ 45,090.26	$ 65,270.85	$ 23,682.98	$ 21,532.61	$ 19,399.78	$12,482.83	
$171,126.34	$162,964.95	$171,386.88	$161,620.74	$125,029.64	$127,435.09	$148,983.41	$184,095.51	$ 153,929.20	$138,440.07	$105,432.36	$114,532.47	$ 41,458.10	$26,918.81	$516.48
$ 26,208.38	$ 43,243.43	$ 41,887.55	$ 20,866.81	$ 23,337.17	$ 35,902.08	$ 59,418.67	$162,823.16	$ 427,318.29	$288,878.22	$183,425.86	$ 68,893.39	$ 27,435.29	$ 516.48	
171,126.34	162,964.95	171,386.88	161,620.74	125,029.64	127,435.09	148,983.41	184,095.51	153,929.20	138,440.07	105,432.36	114,532.47	41,458.10	26,918.81	$516.48
								1,139,075.67						
$197,334.72	$206,208.38	$213,243.43	$181,887.55	$148,366.81	$163,337.17	$208,402.08	$346,918.67	$1,720,323.16	$427,318.29	$288,878.22	$183,425.86	$ 68,893.39	$27,435.29	$516.48
$170,000.00	$180,000.00	$170,000.00	$140,000.00	$127,500.00	$140,000.00	$172,500.00	$287,500.00	$ 57,500.00 1,500,000.00						
$ 27,334.72	$ 26,208.38	$ 43,243.43	$ 41,887.55	$ 20,866.81	$ 23,337.17	$ 35,902.08	$ 59,418.67	$ 162,823.16	$427,318.29	$288,878.22	$183,425.86	$ 68,893.39	$27,435.29	$516.48

Docket G-124

COLORADO-WYOMING GAS COMPANY
RATE OF RETURN
(1926 TO 1939, INCLUSIVE)

Line No.	Particulars	Average (1926-1939)	1939	1938	1937	1936	1935	1934	1933	1932	1931	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	
1	Average balance of gas plant in service, as adjusted		$1,664,538.28	$1,665,747.73	$1,666,346.22	$1,662,192.75	$1,652,358.31	$1,645,496.66	$1,645,726.55	$1,646,401.15	$1,621,604.46	$1
2	Less, average balance in reserve for depreciation of gas plant in service, as adjusted		374,904.19	337,336.01	302,172.42	268,358.16	232,189.53	195,430.29	159,389.38	123,045.84	90,942.97	
3	Net average investment in gas plant in service, as adjusted		$1,289,634.09	$1,328,411.72	$1,364,173.80	$1,393,834.57	$1,420,168.78	$1,450,066.36	$1,486,337.17	$1,523,355.31	$1,530,661.49	$1
4	Working capital requirements (Note 1)		16,234.59	16,234.59	16,234.59	16,234.59	16,234.59	16,234.59	16,234.59	16,234.59	16,234.59	
5	Subtotal		$1,305,868.68	$1,344,646.31	$1,380,408.39	$1,410,069.16	$1,436,403.37	$1,466,300.95	$1,502,571.76	$1,539,589.90	$1,546,896.08	$1
6	Less, average balance in contributions in aid of construction, as adjusted		12,092.94	8,782.48	5,096.05	4,334.35	3,752.77	2,781.19	1,757.80	1,123.27	550.35	
7	Total average investment	$1,163,235.52	$1,293,775.74	$1,335,863.83	$1,375,312.34	$1,405,734.81	$1,432,650.60	$1,463,519.80	$1,500,813.96	$1,538,466.63	$1,546,345.73	$1
8	Utility income (Statement B-6, line 11)	$ 142,707.20	$ 167,902.75	$ 159,781.30	$ 169,414.95	$ 154,931.91	$ 122,225.02	$ 126,096.86	$ 149,233.32	$ 180,522.32	$ 198,643.52	$
9	Rate of return	12.27%	12.98%	11.96%	11.75%	12.32%	11.00%	8.53%	8.62%	9.94%	11.73%	12.85%

17.45%

Note: (1) The working capital requirement for the year 1939 as determined by the Examiner has been used for all years.

Statement B-7
Sheet 1 of 1

EXHIBIT 202 10

COLORADO-WYOMING GAS COMPANY
RATE OF RETURN
(1926 TO 1939, INCLUSIVE)

Average (1926-1939) (2)	1939 (3)	1938 (4)	1937 (5)	1936 (6)	1935 (7)	1934 (8)	1933 (9)	1932 (10)	1931 (11)	1930 (12)	1929 (13)	1928 (14)	1927 (15)	1926 (16)
	$1,664,538.28	$1,665,747.73	$1,666,346.22	$1,662,192.73	$1,652,358.51	$1,645,496.65	$1,645,726.55	$1,646,401.15	$1,621,604.46	$1,454,493.96	$894,444.08	$470,411.11	$406,205.76	$211,548.64
	374,904.19	337,336.01	302,172.42	268,358.16	232,189.53	195,430.29	159,389.38	125,045.84	90,942.97	59,953.63	34,910.60	19,788.88	8,430.16	2,194.82
	$1,289,634.09	$1,328,411.72	$1,364,173.80	$1,393,834.57	$1,420,168.78	$1,450,066.36	$1,486,337.17	$1,523,355.31	$1,530,661.49	$1,394,540.33	$859,533.48	$450,622.23	$397,775.60	$209,353.82
	16,234.59	16,234.59	16,234.59	16,234.59	16,234.59	16,234.59	16,234.59	16,234.59	16,234.59	16,234.59	16,234.59	16,234.59	16,234.59	16,234.59
	$1,305,868.68	$1,344,646.31	$1,380,408.39	$1,410,069.16	$1,436,403.37	$1,466,300.95	$1,502,571.76	$1,539,589.90	$1,546,896.08	$1,410,774.92	$875,768.07	$466,856.82	$414,010.19	$225,588.41
	12,092.94	8,782.48	5,096.05	4,334.35	3,753.77	2,781.15	1,757.80	1,123.27	550.35	160.80	17.75			
	$1,163,235.52	$1,293,775.74	$1,335,863.83	$1,375,312.34	$1,405,734.81	$1,432,644.60	$1,463,519.80	$1,500,813.96	$1,538,166.63	$1,546,345.73	$1,410,614.12	$875,750.32	$466,856.82	$414,010.19	$225,588.41
	$ 142,707.20	$ 167,902.75	$ 159,781.30	$ 169,414.95	$ 154,931.91	$ 122,223.02	$ 126,096.86	$ 149,233.32	$ 180,522.32	$ 198,643.52	$ 203,710.92	$129,115.34	$136,065.08	$ 60,857.88	$ 39,401.64
	12.27%	12.98%	11.96%	11.25%	12.32%	11.02%	8.53%	8.62%	9.94%	11.73%	12.85%	14.44%	14.74%	29.14%	14.70%	17.47%

$17.987o

* year 1939 as determined by the Examiner has been used for all years.

Docket G-125

Schedule B-10
Sheet 1 of 1

COLORADO-WYOMING GAS COMPANY
SUMMARY OF TAXPAYER'S DISPUTED ITEMS
APPLIED TO INCOME STATEMENT FOR THE YEAR ENDED DECEMBER 31, 1959

FLA
Rev. 10/30/59

Entry Number	Description	Operation and General	Depreciation	Taxes - General	Taxes - Federal Income	Taxes - Colorado - State Income	Miscellaneous Income Deductions	Balance Sheet Accounts As Of December 31, 1959	
	(3)	(4)	(5)	(6)		(8)	(7)	(8)	(9)
100	Expenses of entertaining, etc.	$ (1,560.97)					$1,560.97		
101	Donations	(895.50)					895.50		
102	Event reports - Eastern Colorado oil fields	(500.00)					500.00		
103	Delaware corporation tax			$ (150.00)			150.00		
104	Bad debt - International Hotel Foundation	(444.86)					444.86		
105	Rate case expenses	(4,079.16)						Other Deferred Debits	$ 4,079.16
106	Overaccrual of 1959 Federal income tax				$(121.41)			Taxes Accrued - Federal Income	121.41
107	Overaccrual of 1959 Colorado state income tax					$(956.13)		Taxes Accrued - Colorado State Income	956.13
108	Underaccrual of 1959 property taxes			766.50				Taxes Accrued - General	(766.50)
109	Adjustment of Federal capital stock tax			477.00			(477.00)		
110	Gas used incidental to pipe inspection	(202.50)						Other Deferred Debits	202.50
111	Correction of overhead expenses billed by Petroleum Advisors, Inc.	(178.15)						Accounts Payable	178.15
400	Reversal of depreciation per books		$(29,050.00)					Depreciation Reserve	29,000.00
400	Revised annual depreciation		37,969.67					Depreciation Reserve	(37,969.67)
	Total Debits		$ 37,969.67	$1,243.50			$2,990.33		$ 42,955.33
	Total Credits	$(16,860.00)	(29,000.00)	(150.00)	$(127.41)	$(956.13)	(477.00)		(36,720.97)

Docket G-12A

Schedule B-11
Sheet 1 of 1

COLORADO-WYOMING GAS COMPANY
SUMMARY OF EXHIBITS ADJUSTING ENTRIES
APPLIED TO INCOME STATEMENT FOR THE YEAR
ENDED DECEMBER 31, 1958

Entry Number	Description	Gas Purchased for Resale	Operation and General	Depreciation	Taxes - General	Miscellaneous Income Deductions	Balance Sheet Accounts As of December 31, 1958 Title	Amount
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
111	Correction of overhead expenses billed by - Petroleum Advisors, Inc.		$ 457.43				Accounts Payable	$ (457.43)
112	Expenses of entertaining, etc.		(1,067.99)			$1,067.99		
113	Donations		(319.10)			319.10		
114	Event reports - Eastern Colorado oil fields		(500.00)			500.00		
115	Adjustment of Federal capital stock tax				$ (877.00)	877.00		
116	Overaccrual of 1958 property taxes				(211.11)		Taxes Accrued - General	211.11
117	Delaware corporation tax				(150.00)	150.00		
118	Correction of gas purchased	$7.25					Contributions in Aid of Construction	(7.25)
400	Reversal of depreciation per books			$(88,000.00)			Depreciation Reserve	88,000.00
402	Revised annual depreciation			58,066.59			Depreciation Reserve	(58,066.59)
	Total Debits	$7.25	$ 457.43	$ 58,066.59		$2,714.09		$ 88,211.11
	Total Credits		(1,887.09)	(88,000.00)	$(1,238.11)			(58,511.27)

EXHIBIT 262

Docket G-124

COLORADO-WYOMING GAS COMPANY
SUMMARY OF EXAMINER'S ADJUSTING ENTRIES
APPLIED TO INCOME STATEMENT FOR THE YEAR ENDED DECEMBER 31, 1937

Entry Number	Description	Operation and General	Depreciation	Taxes - General	Taxes - Federal Income	Miscellaneous Nonrecurring Charges	Miscellaneous Income Deductions	Interest Charged to Construction - Cr.	Inc
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	
119	Nonrecurring legal expense	$ (732.00)				$ 732.00			
120	Adjustment of Federal capital stock tax			$(1,143.00)			$1,143.00		
121	Over-accrual of 1937 property taxes			(494.86)					
122	Delaware corporation tax			(150.00)			150.00		
123	Excessive charge for Federal income tax				$(8,287.83)				1934 F 1935 F 1936 F
124	Donations	(320.90)					320.90		
125	Scout reports - Eastern Colorado oil fields	(300.00)					300.00		
126	Expenses of entertaining, etc.	(976.47)					976.47		
127	Nonrecurring auto rentals	(114.65)				114.65			
128	Nonrecurring management fees	(2,164.64)				2,164.64			
129	Interest charged to construction							$(62.01)	
130	Reversal of depreciation per books		$(28,000.00)						
131	Adjustment of land costs retired						85.00		
132	Revised annual depreciation		37,785.40						
	Total Debits		$ 37,785.40			$3,011.29	$3,275.37		
	Total Credits	$(4,608.66)	(28,000.00)	$(1,637.86)	$(8,287.83)			$(62.01)	

22665

Schedule B-12
Sheet 1 of 1

EXHIBIT 202 13

COLORADO-WYOMING GAS COMPANY
SUMMARY OF EXAMINER'S ADJUSTING ENTRIES
APPLIED TO INCOME STATEMENT FOR THE YEAR ENDED DECEMBER 31, 1937

Taxes - General (4)	Taxes - Federal Income (5)	Miscellaneous Nonrecurring Charges (6)	Miscellaneous Income Deductions (7)	Interest Charged to Construction - Cr. (8)	Income Statements Prior to 1937 Description (9)	Amount (10)	Balance Sheet Accounts as of December 31, 1939 Title (11)	Amount (12)
		$ 732.00						
(1,443.00)			$1,443.00					
(44.86)							Taxes Accrued - General	$ 44.86
(150.00)			150.00					
	$(8,287.85)				1934 Federal income tax	$2,279.69	Taxes Accrued - Federal Income	1,215.44
					1935 Federal income tax	2,285.12		
					1936 Federal income tax	2,506.98		
			320.90					
			300.00					
			976.47					
		114.65						
		2,164.64						
				$(62.01)			Gas Plant	62.01
							Depreciation Reserve	28,000.00
			85.00				Depreciation Reserve	(85.00)
							Depreciation Reserve	(37,785.40)
		$3,011.29	$3,275.37			$7,071.79		$ 29,322.31
								(37,870.40)
(1,637.86)	$(8,287.85)			$(62.01)				

COLORADO-WYOMING GAS COMPANY
EXAMINER'S ADJUSTING ENTRIES
INCOME STATEMENT - YEAR 1939

EXHIBIT 202

16

	Debit	Credit
No. 102		
Miscellaneous Income Deductions	$ 300.00	
Operation and General		$ 300.00

Reclassification of cost of scout reports covering Eastern Colorado oil fields furnished by Chester T. Harper. Details as follows:

Date (1939)	Voucher Reference	Amount
Jan. 31	6839	$ 25.00
Feb. 28	6886	25.00
Mar. 31	6928	25.00
Apr. 30	6965	25.00
May 31	7005	25.00
June 30	7036	25.00
July 31	7089	25.00
Aug. 31	7140	25.00
Sept. 30	7179	25.00
Oct. 31	7231	25.00
Nov. 30	7279	25.00
Dec. 31	7319	25.00
		$300.00

Copies of the reports received were sent to Mr. H. D. Hancock, 70 Pine Street, New York City, a director of the company. The cost of these reports is regarded as an improper charge against the ratepayers of the Colorado-Wyoming Gas Company for the reason that it appears that other companies in the Cities Service Company group received the use and benefit of such reports but were not assessed a part of the cost thereof.

No. 103		
Miscellaneous Income Deductions	$ 150.00	
Taxes - General		$ 150.00

Reclassification of charge for State of Delaware corporation tax.

COLORADO-WYOMING GAS COMPANY
EXAMINER'S ADJUSTING ENTRIES
INCOME STATEMENT - YEAR 1939

EXHIBIT 20[illegible] 17

	Debit	Credit

No. 103 (Continued)

The company also charged to expense during 1939 an amount of $139.76 for Colorado corporation license tax which is recommended for allowance. The Delaware tax is accordingly a duplication of expense and should not be charged against the ratepayers.

No. 104

Miscellaneous Income Deductions	$ 444.26	
Operation and General		$ 444.26

Reclassification of loss from uncollectible accounts resulting from sale of gas during 1938 to International Metal Foundation, a direct industrial customer.

No. 105

Other Deferred Debits	$14,079.16	
Operation and General		$14,079.16

Reclassification in deferred debit caption of amount charged by respondent during 1939 to Account 991, Regulatory Commission Expense. Refer to Schedule A-13 for analysis, which also includes amount covered by Examiner's entry No. 110.

No. 106

Taxes Accrued - Federal Income	$ 121.41	
Taxes - Federal Income		$ 121.41

Adjustment of overaccrual of 1939 Federal income tax:

Accrued per books	$24,331.96
Tax paid or payable	24,210.55
Excessive accrual	$ 121.41

COLORADO-WYOMING GAS COMPANY
EXAMINER'S ADJUSTING ENTRIES
INCOME STATEMENT - YEAR 1939

	Debit	Credit
No. 107		
Taxes Accrued - Colorado State Income	$ 354.13	
Taxes - Colorado State Income		$ 354.13

Adjustment of overaccrual of 1939 Colorado state income tax:

Accrued per books	$3,300.00
Tax paid or payable	2,945.87
Excessive accrual	$ 354.13

No. 108		
Taxes - General	$ 765.30	
Taxes Accrued - General		$ 765.30

Adjustment of underaccrual of 1939 real and personal taxes:

Taxes paid or payable	$26,118.55
Accrued per books	25,353.25
Underaccrual	$ 765.30

No. 109		
Taxes - General	$ 477.00	
Miscellaneous Income Deductions		$ 477.00

Adjustment to increase Federal capital stock tax for 1939 to 1/10 of 1% of capital stock and surplus per books as of December 31, 1938.

Capital stock account	$1,501,000.00
Surplus account, per company's books, as of December 31, 1938	26,154.50
Total capital stock and surplus, December 31, 1938	$1,527,154.50
Allowable tax, 1/10 of 1% of $1,527,154.50	$1,527.00
Charged to 1939 expense per books	1,050.00
Amount reclassified by this entry	$ 477.00

See also entries Nos. 115 and 120.

Docket G-124

Schedule B-13
Sheet 6 of 6

COLORADO-WYOMING GAS COMPANY
EXAMINER'S ADJUSTING ENTRIES
INCOME STATEMENT - YEAR 1939

EXHIBIT 202

19

	Debit	Credit
No. 110		
Other Deferred Debits	$ 202.50	
Operation and General		$ 202.50
Reclassification of cost of gas lost in cutting test sections south of Fort Collins incidental to pipe line tests in connection with rate case (T.V. 2956, Account 932.2, Transmission Line Operation - Supplies and Expense).		
No. 111		
Operation and General - 1938	$ 457.43	
Operation and General - 1939		$ 178.13
Accounts Payable (Petroleum Advisers, Inc.)		279.30
Taking up invoice for apportionment of overhead expenses of Petroleum Advisers, Inc., for December 1939 which was not recorded on books of Colorado-Wyoming Gas Company until as of January 1940, and adjusting 1938 and 1939 expenses for similar items which were not recorded on the books until 1939.		

COLORADO-WYOMING GAS COMPANY
EXAMINER'S ADJUSTING ENTRIES
INCOME STATEMENT - YEAR 1938

EXHIBIT 202

22

	Debit	Credit

No. 114 (Continued)

Date (1938)	Voucher Reference	Amount
Jan. 31	6360	$ 25.00
Feb. 28	6404	25.00
Mar. 31	6438	25.00
Apr. 30	6475	25.00
May 31	6513	25.00
June 25	6548	25.00
July 31	6593	25.00
Aug. 31	6625	25.00
Sept.30	6669	25.00
Oct. 31	6714	25.00
Nov. 30	6758	25.00
Dec. 31	6799	25.00
		$300.00

Copies of the reports received were sent to Mr. H. D. Hancock, 70 Pine Street, New York City, a director of the company. The cost of these reports is regarded as an improper charge against the ratepayers of the Colorado-Wyoming Gas Company for the reason that it appears that other companies in the Cities Service Company group received the use and benefit of such reports but were not assessed a part of the cost thereof.

No. 115

Miscellaneous Income Deductions	$ 877.00	
Taxes - General		$ 877.00

Reclassification of Federal capital stock tax charged in excess of 1/10 of 1% of capital stock and surplus per books as of December 31, 1937.

Capital stock account	$1,501,000.00
Surplus account, per company's books, as of December 31, 1937	37,327.91
Total capital stock and surplus, December 31, 1937	$1,538,327.91

Docket G-124

Schedule B-14
Sheet 4 of 5

COLORADO-WYOMING GAS COMPANY
EXAMINER'S ADJUSTING ENTRIES
INCOME STATEMENT - YEAR 1938

EXHIBIT 202 23

ELS
6/21/40

	Debit	Credit
No. 115 (Continued)		
Allowable tax, 1/10 of 1% of $1,538,327.91, amounts to	$1,538.00	
Amount charged as tax expense on company's books	2,415.00	
Excess reclassified by this entry	$ 877.00	

As permitted under the revenue act, the company paid Federal capital stock tax on a declared base in excess of the book value of its capital stock including surplus applicable thereto. Its sole purpose in adopting such a base was to avoid payment of Federal excess profits tax which would have been payable in the event that taxable net income for 1938 exceeded 10% of the adjusted declared value of its capital stock returned for purposes of the assessment of the Federal capital stock tax.

In view of the foregoing it is evident that the payment of capital stock tax in excess of 1/10 of 1% of the book value of capital stock, including surplus applicable thereto, was made to prevent possible payment of excess profits tax on taxable net income in excess of 10% of such book value of capital stock.

Accordingly, it is the position of the Examiner that the excess amount of $877.00 reclassified by this entry represents a tax which should be borne by the stockholders out of their return and therefore is not a proper charge against the ratepayers.

No. 116

Taxes Accrued - General (December 31, 1939)	$ 211.11	
Taxes - General		$ 211.11

Excess of amount accrued during 1938 for local property taxes over total amount actually paid for 1938 property taxes.

This entry corrects the overstatement of expenses for 1938 and also adjusts the accrued tax liability account as of December 31, 1939 for the overaccrual.

Docket G-124

Schedule E-14
Sheet 5 of 5

COLORADO-WYOMING GAS COMPANY
EXAMINER'S ADJUSTING ENTRIES
INCOME STATEMENT - YEAR 1938

EXHIBIT 202

24

	Debit	Credit
No. 117		
Miscellaneous Income Deductions	$ 150.00	
Taxes - General		$ 150.00

Reclassification of charge for State of Delaware corporation tax.

The company also charged to expense during 1938 an amount of $141.92 for Colorado corporation license tax which is recommended for allowance. The Delaware tax is accordingly a duplication of expense and should not be charged against the ratepayers.

No. 118		
Gas Purchased for Resale	$ 7.25	
Contributions in Aid of Construction		$ 7.25

Correction of company's entry, J. 133, November 1938, which recorded contributions in aid of construction received from Colorado Interstate Gas Company. The company's entry understated gas purchased for 1938 and the amount contributed by Colorado Interstate Gas Company for amortization of the investment to serve the Edgewater and Mt. Air districts by $7.25.

Docket G-124

Schedule B-15
Sheet 1 of 7

COLORADO-WYOMING GAS COMPANY
EXAMINER'S ADJUSTING ENTRIES
INCOME STATEMENT - YEAR 1937

EXHIBIT 202

25

	Debit	Credit
No. 119		
Miscellaneous Nonrecurring Charges	$ 732.00	
Operation and General		$ 732.00

Reclassification of payment to Lee, Shaw and McCreery, attorneys (Voucher 6354, May 24, 1937), described as "Expense re investigation, development of Wyoming natural gas supplies."

The foregoing explanation of the charge indicates that it is of a nonrecurring nature.

No. 120		
Miscellaneous Income Deductions	$1,443.00	
Taxes - General		$1,443.00

Reclassification of Federal capital stock tax charged in excess of 1/10 of 1% of capital stock and surplus per books as of December 31, 1936.

Capital stock account	$1,501,000.00
Surplus account, per company's books, as of December 31, 1936	33,721.54
Total capital stock and surplus, December 31, 1936	$1,534,721.54
Allowable tax, 1/10 of 1% of $1,534,721.54, amounts to	$1,535.00
Amount charged as tax expense on company's books	2,978.00
Excess reclassified by this entry	$1,443.00

As permitted under the revenue act, the company paid Federal capital stock tax on a declared base in excess of the book value of its capital stock including surplus applicable thereto. Its sole purpose in adopting such a base was to avoid payment of Federal excess profits tax which would have been payable in the event that taxable net income for 1937 exceeded 10% of the adjusted declared value of its capital stock returned for purposes of the assessment of the Federal capital stock tax.

	Debit	Credit

No. 120 (Continued)

In view of the foregoing it is evident that the payment of capital stock tax in excess of 1/10 of 1% of the book value of capital stock, including surplus applicable thereto, was made to prevent possible payment of excess profits tax on taxable net income in excess of 10% of such book value of capital stock.

Accordingly, it is the position of the Examiner that the excess amount of $1,443.00 reclassified by this entry represents a tax which should be borne by the stockholders out of their returns and therefore is not a proper charge against the ratepayers.

No. 121

Taxes Accrued - General (December 31, 1939)	$ 44.86	
Taxes - General		$ 44.86

Excess of amount accrued during 1937 for local property taxes over total amount actually paid for 1937 property taxes.

This entry corrects the overstatement of expenses for 1937 and also adjusts the accrued tax liability account as of December 31, 1939 for the overaccrual.

No. 122

Miscellaneous Income Deductions	$ 150.00	
Taxes - General		$ 150.00

Reclassification of charge for State of Delaware corporation tax.

The company also charged to expense during 1937 an amount of $142.82 for Colorado corporation license tax which is recommended for allowance. The Delaware tax is accordingly a duplication of expense and should not be charged against the ratepayers.

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Docket G-124

Schedule B-15
Sheet 3 of 7

COLORADO-WYOMING GAS COMPANY
EXAMINER'S ADJUSTING ENTRIES
INCOME STATEMENT - YEAR 1937

EXHIBIT 202 27

	Debit	Credit
No. 123		
Taxes - Federal Income - 1934	$2,279.69	
Taxes - Federal Income - 1935	2,285.12	
Taxes - Federal Income - 1936	2,506.98	
Taxes Accrued - Federal Income (Dec. 31, 1939)	1,215.44	
Taxes - Federal Income		$8,287.23

Spreading portion of Federal income tax accrued and charged to expense in 1937 to provide for deficiencies for the years 1934, 1935 and 1936, and adjusting overaccrual of $1,215.44.

This entry adjusts the overstatement of Federal income tax expense for 1937, indicates the correct additional Federal income tax for the years 1934, 1935 and 1936, respectively, and also decreases the accrued tax liability account as of December 31, 1939 by the amount of the overaccrual.

No. 124

Miscellaneous Income Deductions	$ 320.90	
Operation and General		$ 320.90

Reclassification of donations summarized as follows:

Date (1937)	Ref.	Description	Amount
Jan. 6	Vo.5852	Colorado Sheriff's & Peace Officer's Association	$ 25.00
Apr. 12	Vo.5979	United Health Appeal	250.00
Apr. 30	Vo.5999	Police Pension Fund	7.50
Aug. 12	Vo.6153	National Federation of Federal Employees	6.60
Oct. 20	Vo.6235	Firemen's Protective Association	5.00
Nov. 12	Vo.6268	Lamont Singers - International Choral Meet	16.80
Nov. 12	Vo.6269	Young Men's Christian Association	10.00
			$320.90

Docket G-124

Schedule B-15
Sheet 4 of 7

COLORADO-WYOMING GAS COMPANY
EXAMINER'S ACCOUNTING ENTRIES
INCOME STATEMENT - YEAR 1937

EXHIBIT 202

28

	Debit	Credit

No. 124 (Continued)

Donations are regarded as charges which should not be assessed against the ratepayers. Also refer to Account 538, Miscellaneous Income Deductions, page 66, Uniform System of Accounts.

No. 125

Miscellaneous Income Deductions	$ 300.00	
Operation and General		$ 300.00

Reclassification of cost of scout reports covering Eastern Colorado oil fields furnished by Chester T. Harper. Details as follows:

Date (1937)	Voucher Reference	Amount
Jan.	5870	$ 25.00
Feb.	5922	25.00
Mar.	5956	25.00
Apr.	6015	25.00
May	6051	25.00
June	6094	25.00
July	6136	25.00
Aug.	6173	25.00
Sept.	6195	25.00
Oct.	6250	25.00
Nov.	6289	25.00
Dec.	6329	25.00
		$300.00

Copies of the reports received were sent to Mr. H. D. Hancock, 70 Pine Street, New York City, a director of the company. The cost of these reports is regarded as an improper charge against the ratepayers of the Colorado-Wyoming Gas Company for the reason that it appears that other companies in the Cities Service Company group received the use and benefit of such reports but were not assessed a part of the cost thereof.

COLORADO-WYOMING GAS COMPANY
OPERATING REVENUES
YEAR 1939

KLS
6/1/40

Line No.	Description (1)	Point of Delivery (2)	Contract Metering Base (3)	Revenue (4)	M.C.F. (Note 4) Contract Metering Base (5)	M.C.F. (Note 4) Uniform Base 14.65 lb. per sq. in. (6)	Average Rate per M.C.F. Contract Metering Base (7)	Average Rate per M.C.F. Uniform Base 14.65 lb. per sq. in. (8)
	Residential Sales (Miscellaneous Right-of-Way Customers) (Note 1)	Several Points in Colorado	12.43	$ 1,377.17	[illegible]889	2,461	$ .477	$ .562
	Commercial Sales - Green Gables Country Club (Note 1)	Denver, Colorado	12.39	$ 676.94	1,915	1,620	.353	.418
	Direct Industrial Sales:							
3	Adolph Coors Company	Golden, Colorado	12.25	$ 3,507.63	18,677	15,617	.188	.225
4	Board of Water Commissioners of Denver	Marston Lake, Colorado	12.39	1,894.56	9,010	7,620	.21	.249
5	Colorado Portland Cement Company	Laporte, Colorado	12.47	121,860.24	1,015,502	864,390	.12	.141
6	Continental Oil Company (Note 2)	Wellington Field, Colorado	12.47	800.64	4,575	3,894	.175	.206
7	Denver Pressed Brick Company	Loveland, Colorado	12.50	9,707.16	52,997	44,878	.185	.216
8	Great Western Sugar Company	Johnstown, Colorado	12.84	68,214.11	356,606	312,548	.191	.218
9	Golden Fire Brick Company	Golden, Colorado	12.50	10,821.06	66,921	57,170	.162	.19
10	Ideal Cement Company	Brighton, Colorado	12.77	1,982.00	38,570	33,620	.207	.237
11	Producers Canning Company	Ft. Collins, Colorado	12.47	125.32	333	283	.376	.443
12	Public Service Company of Colorado	Valmont Electric Plant, near Boulder, Colorado	12.60	3,403.99	31,056	26,710	.11	.127
13	Thomas Bate & Sons	Near Denver, Colorado	12.32	38.40	81	68	.474	.565
14	Total Direct Industrial Sales			$238,295.01	1,595,388	1,365,788	.149	.174
	Sales to U. S. War Department:							
15	Ft. Logan	Ft. Logan, Colorado	12.64	$ 3,510.40	8,776	7,572	.40	.464
16	Ft. Warren	Ft. Warren, Wyoming	12.30	7,410.80	18,527	15,555	.40	.476
17	Total Sales to U. S. War Department			$ 10,921.20	27,303	23,127	.40	.472
	Sales to Non-Associated Gas Utilities:							
18	Greeley Gas and Fuel Company:	Greeley, Colorado	12.64					
19	Residential and Commercial Gas			$ 60,332.40	150,581	129,921	.40	.464
20	Less: Allowance for Space-Heating Gas (71,013 M.C.F., based on consumers' meters, at 4¢)			2,840.52				
21	Net			$ 57,991.88	150,581	129,921	.381	.442
22	Industrial Gas (Note 3)			6,272.68	20,266	17,485	.31	.359
23	Total Sales to Greeley Gas and Fuel Company			$ 63,664.56	170,847	147,406	.373	.432
24	Highway Gas Company (Residential Gas)	Loveland, Colorado	12.77	692.42	5,334	4,649	.13	.149
25	Total Sales to Non-Associated Gas Utilities			$ 64,357.98	176,181	152,055	.365	.423
26	Sales to Associated Gas Utilities (details per subschedule)	Several Points in Colorado and Wyoming	Several	$515,219.52	1,530,212	1,310,850	.337	.393
27	Readiness-to-Serve Charge - Public Service Company of Colorado Valmont Plant			$ 8,000.00				
28	Miscellaneous Revenues			$ 3.08				
29	Total Operating Revenues			$828,941.30	3,332,188	2,856,831	.249	.290

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Schedule B-15
Sheet 2 of 2

COLORADO-WYOMING GAS COMPANY
OPERATING REVENUES
YEAR 1939

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Notes: (1) All direct residential and commercial customers were transferred to Public Service Company of Colorado as of July 26, 1939.

(2) Sales contract is with Fort Collins Producing Corporation, a subsidiary of Continental Oil Company.

(3) Customers served under industrial contracts by Greeley Gas and Fuel Company, Cheyenne Light, Fuel and Power Company, and Public Service Company of Colorado, respectively, include (in addition to industrials) hospitals, apartments, stores, schools, fraternities, restaurants, etc., which appear to be commercial customers.

(4) All volume data furnished by Bureau of Engineering.

Docket G-124

Schedule B-16
Subschedule No. 1
Sheet 1 of 3

COLORADO-WYOMING GAS COMPANY

OPERATING REVENUES - SUBSCHEDULE OF SALES TO ASSOCIATED GAS UTILITIES

YEAR 1939

Line No.	Description	Contract Metering Base	Revenue	M.C.F. (Note 3) Contract Metering Base	M.C.F. (Note 3) Uniform Base 14.65 lb. per sq. in.	Average Rate per M.C.F. Contract Metering Base	Average Rate per M.C.F. Uniform Base 14.65 lb. per sq. in.
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Cheyenne Light, Fuel and Power Company:	12.30					
2	Residential and Commercial Gas		$175,855.20	439,638	369,116	$ .40	$ .476
	Less: Allowances for Space-Heating Gas						
3	(854,303 M.C.F. - Note 1)		10,172.12				
4	Net		$165,683.08	439,638	369,116	.377	.449
5	Industrial Gas (Note 2)		16,468.64	54,420	45,691	.303	.36
6	Total Cheyenne Light, Fuel and Power Company		$182,151.72	494,058	414,807	.369	.439
	Public Service Company of Colorado:						
7	Denver Fringe:	12.64 & 12.70					
8	Residential and Commercial Gas		$ 29,816.40	74,541	64,688	.40	.461
	Less: Allowances for Space-Heating Gas						
9	(39,579 M.C.F. - Note 1)		1,583.16				
10	Net		$ 28,233.24	74,541	64,688	.379	.436
11	Industrial Gas (Note 2)		18,013.30	116,931	100,888	.154	.179
12	Total Denver Fringe		$ 46,246.54	191,472	165,576	.242	.279
13	Golden:	12.50					
14	Residential and Commercial Gas		$ 17,862.00	44,655	38,102	.40	.469
	Less: Allowances for Space-Heating Gas						
15	(34,700 M.C.F. - Note 1)		1,388.00				
16	Net		$ 16,474.00	44,655	38,102	.369	.432
17	Industrial Gas (Note 2)		17,422.06	94,134	80,319	.185	.217
18	Total Golden		$ 33,896.06	138,789	118,421	.244	.286
19	Boulder:	12.61					
20	Residential and Commercial Gas		$ 66,504.40	166,261	143,109	.40	.465
	Less: Allowances for Space-Heating Gas						
21	(85,510 M.C.F. - Note 1)		3,420.40				
22	Net		$ 63,084.00	166,261	143,109	.379	.441
23	Industrial Gas (Note 2)		3,238.51	10,520	9,054	.308	.358
24	Total Boulder		$ 66,322.51	176,781	152,163	.375	.436
25	Brighton:	12.77					
26	Residential and Commercial Gas		$ 10,555.20	26,388	23,002	.40	.459
	Less: Allowances for Space-Heating Gas						
27	(17,866 M.C.F. - Note 1)		706.64				
28	Net		$ 9,848.56	26,388	23,002	.373	.428
29	Industrial Gas (Note 2)		625.09	1,813	1,580	.345	.396
30	Total Brighton		$ 10,473.65	28,201	24,582	.371	.426

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Schedule S-16
Subschedule No. 1
Sheet 2 of 5

COLORADO-WYOMING GAS COMPANY
OPERATING REVENUES - SUBSCHEDULE OF SALES TO ASSOCIATED GAS UTILITIES
YEAR 1939

KLS
6/5/40

Line No.	Description	Contract Metering Base	Revenue	M.C.F. (Note 2) Contract Metering Base	M.C.F. (Note 2) Uniform Base 14.65 lb. per sq. in.	Average Rate per M.C.F. Contract Metering Base	Average Rate per M.C.F. Uniform Base 14.65 lb. per sq. in.
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Public Service Company of Colorado (Cont'd)						
31	Ft. Lupton:	12.77					
32	Residential and Commercial Gas		$ 4,010.00	10,025	8,739	$ .40	$ .459
33	Less: Allowances for Space-Heating Gas (7,056 M.C.F. - Note 1)		282.24				
34	Total Ft. Lupton		$ 3,727.76	10,025	8,739	.372	.427
35	Longmont:	12.77					
36	Residential and Commercial Gas		$ 17,582.00	43,955	38,314	.40	.459
37	Less: Allowances for Space-Heating Gas (28,322 M.C.F. - Note 1)		1,132.88				
38	Net		$ 16,449.12	43,955	38,314	.374	.429
39	Industrial Gas (Note 2)		464.70	1,215	1,059	.382	.439
40	Total Longmont		$ 16,913.82	45,170	39,373	.374	.43
41	Berthoud:	12.64					
42	Residential and Commercial Gas		$ 2,189.60	5,474	4,723	.40	.464
43	Less: Allowances for Space-Heating Gas (2,891 M.C.F. - Note 1)		115.64				
44	Total Berthoud		$ 2,073.96	5,474	4,723	.379	.439
45	Johnstown:	12.64					
46	Residential and Commercial Gas		$ 3,531.20	8,828	7,757	.40	.456
47	Less: Allowances for Space-Heating Gas (5,686 M.C.F. - Note 1)		227.44				
48	Total Johnstown		$ 3,303.76	8,828	7,757	.374	.427
49	Loveland:	12.77					
50	Residential and Commercial Gas		$ 14,899.20	37,248	32,668	.40	.459
51	Less: Allowances for Space-Heating Gas (21,078 M.C.F. - Note 1)		843.12				
52	Net		$ 14,056.08	37,248	32,668	.377	.433
53	Industrial Gas (Note 2)		2,176.67	6,884	6,000	.316	.363
54	Total Loveland		$ 16,232.75	44,132	38,668	.368	.422
55	Ft. Collins:	12.72					
56	Residential and Commercial Gas		$113,344.00	284,860	247,332	.40	.461
57	Less: Allowances for Space-Heating Gas (215,994 M.C.F. - Note 1)		8,639.76				
58	Net		$105,304.24	284,860	247,332	.37	.426
59	Industrial Gas (Note 2)		28,372.75	102,432	88,929	.279	.321
60	Total Ft. Collins		$133,676.99	387,292	336,261	.346	.398
61	Total Public Service Company of Colorado		$333,067.80	1,036,154	895,043	.321	.372
62	Total Sales to Associated Gas Utilities		$515,219.52	1,530,212	1,310,850	.337	.393

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Schedule B-16
Subschedule No. 1
Sheet 3 of 3

COLORADO-WYOMING GAS COMPANY
OPERATING REVENUES - SUBSCHEDULE OF SALES TO ASSOCIATED GAS UTILITIES
YEAR 1939

KLS
6/5/40

Line No.	Description	Contract Metering Base	Revenue	M.C.F. (Note 3) Contract Metering Base	M.C.F. (Note 3) Uniform Base 14.65 lb. per sq. in.	Average Rate per M.C.F. Contract Metering Base	Average Rate per M.C.F. Uniform Base 14.65 lb. per sq. in.
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Recapitulation:						
63	Residential and Commercial Gas		$456,749.20	1,141,873	977,330	$ .40	$ .467
	Less: Allowances for Space-Heating Gas						
64	(712,765 M.C.F. - Note 1)		28,511.40				
65	Net		$428,237.80	1,141,873	977,330	.375	.438
66	Industrial Gas (Note 2)		86,981.72	388,339	333,520	.224	.261
67	Total Sales to Associated Gas Utilities		$515,219.52	1,530,212	1,310,850	.337	.393

Notes: (1) Allowances for space-heating gas are computed at 4¢ per M.C.F. based upon meter readings of customers of the distributing companies.

(2) Customers served under industrial contracts by Cheyenne Light, Fuel and Power Company and Public Service Company of Colorado, respectively, include (in addition to industrials) hospitals, apartments, stores, schools, fraternities, restaurants, etc., which appear to be commercial customers.

(3) All volume data furnished by Bureau of Engineering.

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Schedule B-17
Sheet 1 of 2

COLORADO-WYOMING GAS COMPANY
OPERATING REVENUES
YEAR 1940

hee 6/19/40 Line No.	Description (1)	Point of Delivery (2)	Contract Metering Base (3)	Revenue (4)	M.C.F. (Note 1) Contract Metering Base (5)	M.C.F. (Note 1) Uniform Base 14.65 lb. per sq. in. (6)	Average Rate per M.C.F. Contract Metering Base (7)	Average Rate per M.C.F. Uniform Base 14.65 lb. per sq. in. (8)
	Residential Sales (Miscellaneous):							
1	Right-of-Way Customers) (Note 1)	Several Points in Colorado	12.43	$ 2,254.89	4,606	3,908	$.485	$.572
	Commercial Sales - Green Gables Country							
2	Club (Note 1)	Denver, Colorado	12.39	$ 1,100.80	3,044	2,574	.362	.428
	Direct Industrial Sales:							
3	Adolph Coors Company	Golden, Colorado	12.25	$ 2,089.13	9,951	8,304	.21	.252
4	Board of Water Commissioners of Denver	Marston Lake, Colorado	12.39	2,071.12	9,991	8,450	.207	.245
5	Colorado Portland Cement Company	Laporte, Colorado	12.47	84,737.28	706,144	601,066	.12	.141
6	Continental Oil Company (Note 2)	Wellington Field, Colorado	12.47	529.22	3,024	2,574	.175	.206
7	Denver Pressed Brick Company	Loveland, Colorado	12.50	11,562.72	62,904	53,672	.184	.215
8	Great Western Sugar Company	Johnstown, Colorado	12.84	54,035.56	287,051	251,586	.191	.218
9	Golden Fire Brick Company	Golden, Colorado	12.50	11,619.75	72,185	61,591	.161	.189
10	Sunset-Empson Company	Brighton, Colorado	12.77	7,364.88	34,732	30,275	.212	.243
11	Producers Canning Company	Ft. Collins, Colorado	12.47	250.57	1,037	869	.242	.284
12	Public Service Company of Colorado	Valmont Electric Plant, near Boulder, Colorado	12.60	None				
13	International Metal Foundation	Near Denver, Colorado	12.59	1,000.66	3,981	3,367	.251	.297
14	Total Direct Industrial Sales			$176,160.89	1,190,980	1,021,768	.148	.172
	Sales to U.S. War Department:							
15	Ft. Logan	Ft. Logan, Colorado	12.64	$ 3,508.00	8,770	7,567	.40	.464
16	Ft. Warren	Ft. Warren, Wyoming	12.50	7,528.40	18,821	15,802	.40	.476
17	Total Sales to U.S. War Department			$ 11,036.40	27,591	23,369	.40	.472
	Sales to Non-Associated Gas Utilities:							
18	Greeley Gas and Fuel Company:	Greeley, Colorado	12.64					
19	Residential and Commercial Gas			$ 55,370.80	138,427	119,435	.40	.464
20	Less: Allowances for Space-heating Gas (65,624 M.C.F., based on consumers' meters at 4¢)			2,624.96				
21	Net			$ 52,745.84	138,427	119,435	.381	.442
22	Industrial Gas (Note 3)			5,859.69	20,049	17,298	.292	.339
23	Total Sales to Greeley Gas and Fuel Company			$ 58,605.53	158,476	136,733	.37	.429
24	Highway Gas Company (Residential Gas)	Loveland, Colorado	12.77	1,120.47	8,619	7,513	.13	.149
25	Total Sales to Non-Associated Gas Utilities			$ 59,726.00	167,095	144,246	.357	.414
26	Sales to Associated Gas Utilities (details per subschedule)	Several Points in Colorado and Wyoming	Several	$491,813.21	1,461,503	1,252,136	.337	.393
27	Customers' Forfeited Discounts			$ 41.09				
28	Readiness-to-Serve Charge - Public Service Company of Colorado Valmont Plant			$ 8,000.00				
29	Miscellaneous Revenues			$ 3.39				
30	Total Operating Revenues			$752,116.67	2,854,819	2,418,001	.263	.306

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Sheet 2 of 2

COLORADO-WYOMING GAS COMPANY
OPERATING REVENUES
YEAR 1938

EXHIBIT 202

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Notes: (1) All direct residential and commercial customers were transferred to Public Service Company of Colorado as of July 26, 1939.

(2) Sales contract is with Fort Collins Producing Corporation, a subsidiary of Continental Oil Company.

(3) Customers served under industrial contracts by Greeley Gas and Fuel Company, Cheyenne Light, Fuel and Power Company and Public Service Company of Colorado, respectively, include (In addition to industrials) hospitals, apartments, stores, schools, fraternities, restaurants, etc., which appear to be commercial customers.

(4) All volume data furnished by Bureau of Engineering.

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Schedule R-17
Subschedule No. 1
Sheet 1 of 3

COLORADO-WYOMING GAS COMPANY
OPERATING REVENUES - SUBSCHEDULE OF SALES TO ASSOCIATED GAS UTILITIES
YEAR 1938

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Line No.	Description (1)	Contract Metering Base (2)	Revenue (3)	M.C.F. (Note 3) Contract Metering Base (4)	M.C.F. (Note 3) Uniform Base 14.65 lb. per sq. in. (5)	Average Rate per M.C.F. Contract Metering Base (6)	Average Rate per M.C.F. Uniform Base 14.65 lb. per sq. in. (7)
1	Cheyenne Light, Fuel and Power Company:	12.30					
2	Residential and Commercial Gas		$163,473.60	408,684	343,127	$ .400	$ .476
	Less: Allowances for Space-Heating Gas						
3	(229,724 M.C.F. - Note 1)		9,188.96				
4	Net		$154,284.64	408,684	343,127	.378	.450
5	Industrial Gas (Note 2)		17,470.26	57,195	48,020	.305	.364
	Total Cheyenne Light, Fuel and						
6	Power Company		$171,754.90	465,879	391,147	.369	.439
	Public Service Company of Colorado:						
7	Denver Fringe	12.64 & 12.90					
8	Residential and Commercial Gas		$ 26,934.80	67,337	58,415	.400	.461
	Less: Allowances for Space-Heating Gas						
9	(32,552 M.C.F. - Note 1)		1,302.08				
10	Net		$ 25,632.72	67,337	58,415	.381	.439
11	Industrial Gas (Note 2)		17,630.71	115,302	99,482	.153	.177
12	Total Denver Fringe		$ 43,263.43	182,639	157,897	.237	.274
13	Golden:	12.50					
14	Residential and Commercial Gas		$ 17,695.20	44,238	37,746	.400	.469
	Less: Allowances for Space-Heating Gas						
15	(33,459 M.C.F. - Note 1)		1,338.36				
16	Net		$ 16,356.84	44,238	37,746	.370	.433
17	Industrial Gas (Note 2)		16,092.53	85,808	73,215	.188	.220
18	Total Golden		$ 32,449.37	130,046	110,961	.250	.292
19	Boulder:	12.61					
20	Residential and Commercial Gas		$ 62,912.40	157,281	135,379	.400	.465
	Less: Allowances for Space-Heating Gas						
21	(80,626 M.C.F. - Note 1)		3,225.04				
22	Net		$ 59,687.36	157,281	135,379	.379	.441
23	Industrial Gas (Note 2)		3,368.79	10,994	9,464	.306	.356
24	Total Boulder		$ 63,056.15	168,275	144,843	.375	.435
25	Brighton:	12.77					
26	Residential and Commercial Gas		$ 9,770.00	24,425	21,290	.400	.459
	Less: Allowances for Space-Heating Gas						
27	(16,391 M.C.F. - Note 1)		655.64				
28	Net		$ 9,114.36	24,425	21,290	.373	.428
29	Industrial Gas (Note 2)		452.74	1,296	1,130	.349	.401
30	Total Brighton		$ 9,567.10	25,721	22,420	.372	.427

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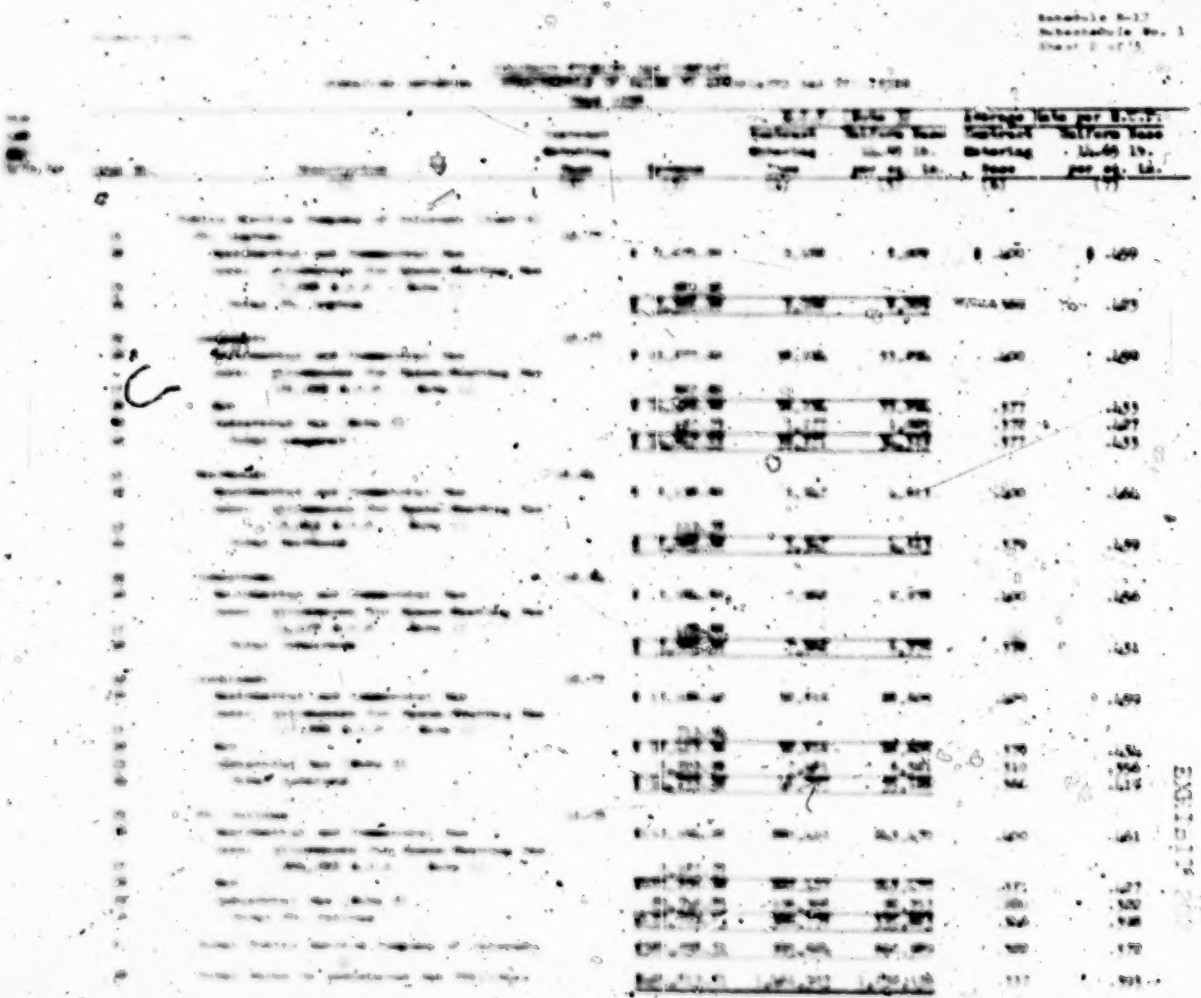

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Schedule B-17
Subschedule No. 1
Sheet 3 of 3

COLORADO-WYOMING GAS COMPANY
OPERATING REVENUES - SUBSCHEDULE OF SALES TO ASSOCIATED GAS UTILITIES
YEAR 1938

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5/31/40

Line No.	Description	Contract Metering Base	Revenue	M.C.F. (Note 3) Contract Metering Base	M.C.F. (Note 3) Uniform Base 14.65 lb. per sq. in.	Average Rate per M.C.F. Contract Metering Base	Average Rate per M.C.F. Uniform Base 14.65 lb. per sq. in.
		(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Recapitulation:						
63	Residential and Commercial Gas		$430,352.80	1,075,882	920,926	$ .400	$ .467
64	Less: Allowances for Space-Heating Gas (651,379 M.C.F. - Note 1)		26,055.16				
65	Net		$404,297.64	1,075,882	920,926	.376	.439
66	Industrial Gas (Note 2)		87,515.57	385,621	331,210	.227	.264
67	Total Sales to Associated Gas Utilities		$491,813.21	1,461,503	1,252,136	.337	.393

Notes: (1) Allowances for space-heating gas are computed at 4¢ per M.C.F. based upon meter readings of customers of the distributing companies.

(2) Customers served under industrial contracts by Cheyenne Light, Fuel and Power Company and Public Service Company of Colorado, respectively, include (in addition to industrials) hospitals, apartments, stores, schools, fraternities, restaurants, etc., which appear to be commercial customers.

(3) All volume data furnished by Bureau of Engineering.

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Sheet 1 of 2

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COLORADO-WYOMING GAS COMPANY
OPERATING REVENUES
YEAR 1937

Line No.	Description (1)	Point of Delivery (2)	Contract Metering Base (3)	Revenue (4)	M.C.F. (Note 4) Contract Metering Base (5)	M.C.F. (Note 4) Uniform Base 14.65 lb. per sq. in. (6)	Average Rate per M.C.F. Contract Metering Base (7)	Average Rate per M.C.F. Uniform Base 14.65 lb. per sq. in. (8)
	Residential Sales (Miscellaneous							
1	Right-of-Way Customers) (Note 1)	Several Points in Colorado	12.43	$ 2,228.99	4,580	3,886	$ .487	$ .573
	Commercial Sales - Green Gables Country							
2	Club (Note 1)	Denver, Colorado	12.39	$ 1,100.10	3,042	2,573	.362	.428
	Direct Industrial Sales:							
3	Amerada Petroleum Company	Cheyenne, Wyoming	12.47	$ 8,247.80	41,239	35,102	.200	.235
4	Adolph Coors Company	Golden, Colorado	12.25	2,304.47	10,489	8,771	.220	.263
5	Board of Water Commissioners of Denver	Marston Lake, Colorado	12.39	2,139.72	10,298	8,709	.208	.246
6	Colorado Portland Cement Company	Laporte, Colorado	12.47	115,427.64	961,897	818,761	.120	.141
7	Continental Oil Company (Note 2)	Wellington Field, Colorado	12.47	1,293.39	7,438	6,331	.174	.204
8	Denver Pressed Brick Company	Loveland, Colorado	12.50	2,080.08	10,221	8,721	.204	.239
9	Great Western Sugar Company	Johnstown, Colorado	12.84	61,854.80	323,636	283,651	.151	.218
10	Golden Fire Brick Company	Golden, Colorado	12.50	12,474.00	77,880	66,450	.160	.188
11	Exner-Simpson Company	Brighton, Colorado	12.77	6,910.13	33,127	28,876	.209	.239
12	Producers Canning Company	Ft. Collins, Colorado	12.47	178.53	750	638	.238	.280
13	Public Service Company of Colorado	Valmont Electric Plant, near Boulder, Colorado	12.60	449.24	4,086	3,514	.11	.128
14	Total Direct Industrial Sales			$213,359.80	1,481,061	1,269,524	.144	.168
	Sales to U. S. War Department:							
15	Ft. Logan	Ft. Logan, Colorado	12.64	$ 3,124.40	7,811	6,740	.400	.464
16	Ft. Warren	Ft. Warren, Wyoming	12.50	6,899.60	17,249	14,482	.400	.476
17	Total Sales to U. S. War Department			$ 10,024.00	25,060	21,222	.400	.472
	Sales to Non-Associated Gas Utilities:							
18	Greeley Gas and Fuel Company:	Greeley, Colorado	12.64					
19	Residential and Commercial Gas			$ 52,104.80	130,262	112,389	.400	.464
	Less: Allowances for Space-heating Gas (62,408 M.C.F., based on							
20	consumers' meters, at 4¢)			2,496.32				
21	Net			$ 49,608.48	130,262	112,389	.381	.441
22	Industrial Gas (Note 3)			5,806.71	20,251	17,473	.287	.332
23	Total Sales to Greeley Gas and Fuel Company			$ 55,415.19	150,513	129,862	.368	.427
24	Highway Gas Company (Residential Gas)	Loveland, Colorado	12.77	1,215.98	9,446	8,234	.129	.148
25	Total Sales to Non-Associated Gas Utilities			$ 56,631.17	159,959	138,096	.354	.410
26	Sales to Associated Gas Utilities (details per subschedule)	Several Points in Colorado and Wyoming	Several	$492,721.08	1,450,183	1,241,974	.340	.397
27	Readiness-to-Serve Charge - Public Service Company of Colorado Valmont Plant			$ 8,000.00				
28	Miscellaneous Revenues			$ 3.38				
29	Total Operating Revenues			$784,068.52	3,123,885	2,677,275	.25[illegible]	.293

EXHIBIT 202

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EXHIBIT 202

Docket G-124

Schedule B-18
Sheet 2 of 2

COLORADO-WYOMING GAS COMPANY
OPERATING REVENUES
YEAR 1937

Notes: (1) All direct residential and commercial customers were transferred to Public Service Company of Colorado as of July 26, 1939.

(2) Sales contract is with Fort Collins Producing Corporation, a subsidiary of Continental Oil Company.

(3) Customers served under industrial contracts by Greeley Gas and Fuel Company, Cheyenne Light, Fuel and Power Company and Public Service Company of Colorado, respectively, include (in addition to industrials) hospitals, apartments, stores, schools, fraternities, restaurants, etc., which appear to be commercial customers.

(4) All volume data furnished by Bureau of Engineering.

Docket [illegible]

Schedule B-18
Subschedule No. 1
Sheet 1 of 3

COLORADO-WYOMING GAS COMPANY
[illegible] REVENUES - SUBSCHEDULE OF SALES TO ASSOCIATED GAS UTILITIES
YEAR 1937

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Line No.	Description (1)	Contract Metering Base (2)	Revenue (3)	M.C.F. (Note 3) Contract Metering Base (4)	M.C.F. (Note 3) Uniform Base 14.65 lb. per sq. in. (5)	Average Rate per M.C.F. Contract Metering Base (6)	Average Rate per M.C.F. Uniform Base 14.65 lb. per sq. in. (7)
1	Cheyenne Light, Fuel and Power Company:	12.30					
2	Residential and Commercial Gas		$164,252.80	410,632	344,763	$ .400	$ .476
3	Less: Allowances for Space-Heating Gas (227,985 M.C.F. - Note 1)		9,119.40				
4	Net		$155,133.40	410,632	344,763	.378	.450
5	Industrial Gas (Note 2)		20,135.19	66,551	55,875	.303	.360
6	Total Cheyenne Light, Fuel and Power Company		$175,268.59	477,183	400,638	.367	.43[illegible]
	Public Service Company of Colorado:						
7	Denver Fringe:	12.64 and 12.90					
8	Residential and Commercial Gas		$ 24,690.80	61,727	53,508	.400	.461
9	Less: Allowances for Space-Heating Gas (28,201 M.C.F. - Note 1)		1,128.04				
10	Net		$ 23,562.76	61,727	53,508	.382	.440
11	Industrial Gas (Note 2)		16,146.87	108,778	93,854	.148	.172
12	Total Denver Fringe		$ 39,709.63	170,505	147,362	.233	.269
13	Golden	12.50					
14	Residential and Commercial Gas		$ 17,347.60	43,369	37,004	.400	.469
15	Less: Allowances for Space-Heating Gas (32,034 M.C.F. - Note 1)		1,281.36				
16	Net		$ 16,066.24	43,369	37,004	.370	.434
17	Industrial Gas (Note 2)		16,084.98	86,379	73,703	.186	.218
18	Total Golden		$ 32,151.22	129,748	110,707	.248	.290
19	Boulder:	12.61					
20	Residential and Commercial Gas		$ 59,975.60	149,939	129,059	.400	.465
21	Less: Allowances for Space-Heating Gas (75,867 M.C.F. - Note 1)		3,034.68				
22	Net		$ 56,940.92	149,939	129,059	.380	.441
23	Industrial Gas (Note 2)		3,746.91	12,340	10,624	.304	.353
24	Total Boulder		$ 60,687.83	162,279	139,683	.374	.434
25	Brighton:	12.77					
26	Residential and Commercial Gas		$ 8,710.00	21,775	18,980	.400	.459
27	Less: Allowances for Space-Heating Gas (14,588 M.C.F. - Note 1)		583.52				
28	Net		$ 8,126.48	21,775	18,980	.373	.428
29	Industrial Gas (Note 2)		750.36	2,191	1,910	.342	.393
30	Total Brighton		$ 8,876.84	23,966	20,890	.370	.425
31	Ft. Lupton:	12.77					
32	Residential and Commercial Gas		$ 3,549.20	8,873	7,734	.400	.459
33	Less: Allowances for Space-Heating Gas (5,704 M.C.F. - Note 1)		228.16				
34	Total Ft. Lupton		$ 3,3[illegible].04	8,873	7,734	.374	.429

EXHIBIT 202

Docket G-124

Schedule G-1B
Subschedule No. 1
Sheet 2 of 5

COLORADO-WYOMING GAS COMPANY

OPERATING REVENUES - DISTRIBUTION OF RATES TO ASSOCIATED GAS UTILITIES

YEAR 1957

Line No.	Description (1)	Contract Metering Base (2)	Revenue (3)	M.C.F. (Note 3) Contract Metering Base (4)	M.C.F. (Note 3) Uniform Base 14.65 lb. per sq. in. (5)	Average Rate per M.C.F. Contract Metering Base (6)	Average Rate per M.C.F. Uniform Base 14.65 lb. per sq. in. (7)
35	Longmont:	12.77					
36	Residential and Commercial Gas		$ 11,535.20	28,858	25,137	$ .400	$ .459
37	Less: Allowances for Space-Heating Gas (17,993 M.C.F. - Note 1)		705.72				
38	Net		$ 10,851.48	28,858	25,137	.376	.431
39	Industrial Gas (Note 2)		580.69	1,701	1,483	.341	.392
40	Total Longmont		$ 11,432.17	30,559	26,620	.374	.429
41	Berthoud:	13.54					
42	Residential and Commercial Gas		$ 1,892.80	4,732	4,082	.400	.464
43	Less: Allowances for Space-Heating Gas (2,958 M.C.F. - Note 1)		118.32				
44	Total Berthoud		$ 1,774.48	4,732	4,082	.375	.435
45	Johnstown:	12.84					
46	Residential and Commercial Gas		$ 2,559.60	6,399	5,608	.400	.456
47	Less: Allowances for Space-Heating Gas (2,933 M.C.F. - Note 1)		117.32				
48	Total Johnstown		$ 2,442.28	6,399	5,608	.382	.435
49	Loveland:	12.77					
50	Residential and Commercial Gas		$ 11,453.60	28,634	24,958	.400	.459
51	Less: Allowances for Space-Heating Gas (14,698 M.C.F. - Note 1)		564.32				
52	Net		$ 10,889.28	28,634	24,958	.380	.436
53	Industrial Gas (Note 2)		2,505.24	8,129	7,087	.311	.356
54	Total Loveland		$ 13,394.52	36,763	32,045	.364	.418
55	Ft. Collins:	12.72					
56	Residential and Commercial Gas		$114,614.80	286,537	248,788	.400	.461
57	Less: Allowances for Space-Heating Gas (43,699 M.C.F. - Note 1)		1,739.96				
58	Net		$112,874.84	286,537	248,788	.394	.454
59	Industrial Gas (Note 2)		30,807.42	112,659	97,817	.273	.315
60	Total Ft. Collins		$143,682.26	399,196	346,605	.360	.415
61	Total Public Service Company of Colorado		$317,452.49	973,000	841,336	.326	.377
62	Total Sales to Associated Gas Utilities		$492,721.08	1,450,183	1,241,974	.340	.397
	Recapitulation:						
63	Residential and Commercial Gas		$420,582.00	1,051,455	899,621	.400	.468
64	Less: Allowances for Space-Heating Gas (465,970 M.C.F. - Note 1)		18,638.80				
65	Net		$401,943.20	1,051,455	899,621	.382	.447
66	Industrial Gas (Note 2)		90,777.88	398,728	342,353	.228	.265
67	Total Sales to Associated Gas Utilities		$492,721.08	1,450,183	1,241,974	.340	.397

EXHIBIT 202

EXHIBIT 20

Docket G-124

Schedule B-18
Subschedule No. 1
Sheet 3 of 3

OPERATING REVENUES - COLORADO-WYOMING GAS COMPANY
SUBSCHEDULE OF SALES TO ASSOCIATED GAS UTILITIES
YEAR 1937

(1) Allowances for space-heating gas are computed at 4¢ per M.C.F. based upon meter readings of customers of the distributing companies.

(2) Customers served under industrial contracts by Cheyenne Light, Fuel and Power Company and Public Service Company of Colorado, respectively, include (in addition to industrials) hospitals, apartments, stores, schools, fraternities, restaurants, etc., which appear to be commercial customers.

(3) All volume data furnished by Bureau of Engineering.

Docket G-124

Schedule B-19
Sheet 1 of 1

COLORADO-WYOMING GAS COMPANY
GAS PURCHASED FOR RESALE
YEAR 1939

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Line No.	Description (1)	Point of Delivery (2)	Contract Metering Base (3)	Cost (4)	M.C.F. Contract Metering Base (5)	M.C.F. Uniform Base 14.65 lb. per sq. in. (6)	Average Rate per M.C.F. Contract Metering Base (7)	Average Rate per M.C.F. Uniform Base 14.65 lb. per sq. in. (8)
	Industrial Gas:							
1	Colorado Interstate Gas Company	Arapahoe Station near Littleton, Colorado	12.9	$222,671.27	1,950,764	1,717,733	$ .114	$ .130
	Residential and Commercial Gas:							
2	Colorado Interstate Gas Company	Arapahoe Station near Littleton, Colorado	12.9	$270,324.87	1,290,264	1,136,137	.210	.238
3	Goodstein Pipe Line Company	Berthoud Field, Colorado	14.65	4,787.80	47,878	47,878	.100	.100
4	Ed Mosher	Berthoud Field, Colorado	14.65	319.10	3,191	3,191	.100	.100
5	Total Residential and Commercial Gas			$275,431.77	1,341,333	1,187,206	.205	.232
6	Total Gas Purchased for Resale			$498,103.04	3,292,097	2,904,939	.151	.171
	Recapitulation by Vendors							
7	Colorado Interstate Gas Company			$492,996.14	3,241,028	2,853,870	.152	.173
8	Goodstein Pipe Line Company			4,787.80	47,878	47,878	.100	.100
9	Ed Mosher			319.10	3,191	3,191	.100	.100
10	Total Gas Purchased for Resale			$498,103.04	3,292,097	2,904,939	.151	.171

Note:
Effective September 28, 1939, the rate for gas which had been purchased from Colorado Interstate Gas Company at 20 cents per M.C.F. was increased to 22.5 cents per M.C.F.

EXHIBIT 202

Docket G-124

Schedule B-19
Supplement No. 1
Sheet 1 of 2

COLORADO-WYOMING GAS COMPANY
GAS PURCHASED FOR RESALE - SUBSIDIARIES OF INDUSTRIAL GAS
YEAR 1939

Line No.	Description	Cost	M.C.F. Contract Metering Base	M.C.F. Uniform Base 14.65 lb. per sq. in.	Average Rate per M.C.F. Contract Metering Base	Average Rate per M.C.F. Uniform Base 14.65 lb. per sq. in.
	(1)	(2)	(3)	(4)	(5)	(6)
	Purchased at Industrial Rates for Resale to:					
1	Adolph Coors Company	$ 98,199.85	17,541	15,445	$ .125	$ .142
2	Board of Water Commissioners of Denver	1,060.70	8,416	7,410	.126	.143
3	Colorado Portland Cement Company	93,257.15	981,653	864,390	.095	.108
4	Continental Oil Company (Note 1).	552.67	4,483	3,894	.125	.142
5	Denver Pressed Brick Company	6,370.68	50,965	44,878	.125	.142
6	Great Western Sugar Company	44,546.99	354,776	312,396	.126	.143
7	Golden Fire Brick Company	8,105.63	64,846	57,100	.125	.142
8	Kuner-Empson Company	4,784.35	38,188	33,620	.125	.142
9	Producers Canning Company	50.02	281	247	.178	.202
10	Public Service Company of Colorado (Valmont Plant)	2,938.16	30,334	26,710	.097	.110
11	Cheyenne Light, Fuel and Power Company	7,062.48	40,376	35,553	.175	.199
	Public Service Company of Colorado:					
12	Denver Fringe	14,011.27	113,879	100,276	.123	.140
13	Golden	11,417.06	90,520	79,707	.126	.143
14	Boulder	1,297.82	7,586	6,679	.171	.194
15	Brighton	217.37	1,111	1,005	.191	.216
16	Longmont	73.31	337	297	.218	.247
17	Loveland	943.70	5,349	4,710	.176	.200
18	Ft. Collins	13,122.26	84,820	74,688	.155	.176
19	Greeley Gas and Fuel Company	2,662.94	15,457	13,611	.172	.196
20	Total Purchased at Industrial Rates	$274,188.50	1,910,881	1,682,616	.112	.127
	Purchased at 20 cents per M.C.F. for Resale to:					
21	Adolph Coors Company	$ 39.20	196	172	.200	.228
22	Board of Water Commissioners of Denver	47.60	238	210	.200	.227
23	Great Western Sugar Company	34.60	173	152	.200	.228
24	Producers Canning Company	8.20	41	36	.200	.228
25	Cheyenne Light, Fuel and Power Company	1,846.40	9,232	8,130	.200	.227
	Public Service Company of Colorado:					
26	Denver Fringe	105.60	528	466	.200	.227
27	Golden	137.00	685	603	.200	.227
28	Boulder	391.00	1,955	1,721	.200	.227
29	Brighton	73.40	367	323	.200	.227
30	Longmont	138.40	692	609	.200	.227
31	Loveland	194.20	971	855	.200	.227
32	Ft. Collins	2,487.80	12,439	10,953	.200	.227
33	Greeley Gas and Fuel Company	663.80	3,319	2,922	.200	.227
34	Total Purchased at 20 Cents per M.C.F.	$ 5,167.20	30,856	27,151	.200	.227

EXHIBIT NO. 22

Docket G-124 7.

Schedule B-19
Subschedule No. 1
Sheet 2 of 2

COLORADO-WYOMING GAS COMPANY
GAS PURCHASED FOR RESALE - SUBSCHEDULE OF INDUSTRIAL GAS
YEAR 1939

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Line No.	Description	Cost	M.C.F. Contract Metering Base	M.C.F. Uniform Base 14.65 lb. per sq. in.	Average Rate per M.C.F. Contract Metering Base	Average Rate per M.C.F. Uniform Base 14.65 lb. per sq. in.
	(1)	(2)	(3)	(4)	(5)	(6)
	Purchased at 22½ cents per M.C.F. for Resale to:					
35	Thomas Bate & Sons	$ 17.32	77	68	$ .225	$ .255
36	Cheyenne Light, Fuel and Power Company	513.00	2,280	2,008	.225	.255
	Public Service Company of Colorado:					
37	Denver Fringe	37.57	167	147	.225	.256
38	Golden	2.25	10	9	.225	.250
39	Boulder	167.18	743	654	.225	.256
40	Brighton	64.58	287	252	.225	.256
41	Longmont	39.15	174	153	.225	.256
42	Loveland	111.75	494	435	.225	.256
43	Ft. Collins	840.15	3,734	3,288	.225	.256
44	Greeley Gas and Fuel Company	243.22	1,081	952	.225	.255
45	Total Purchased at 22½ cents per M.C.F.	$ 2,035.57	9,047	7,966	.225	.256
46	Total Industrial Gas Purchased for Resale	$222,671.27	1,950,764	1,717,733	.114	.130

Note: (1) Sales contract is with Fort Collins Producing Corporation, a subsidiary of Continental Oil Company.

EXHIBIT 202 C.A.V. 49

Docket G-124

Schedule B-19
Subschedule No. 2
Sheet 1 of 1

COLORADO-WYOMING GAS COMPANY
GAS PURCHASED FOR RESALE - SUBSCHEDULE OF RESIDENTIAL AND COMMERCIAL GAS
YEAR 1939

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Line No.	Description (1)	Cost (2)	M.C.F. Contract Metering Base (3)	M.C.F. Uniform Base 14.65 lb. per sq. in. (4)	Average Rate per M.C.F. Contract Metering Base (5)	Average Rate per M.C.F. Uniform Base 14.65 lb. per sq. in. (6)
	Colorado Interstate Gas Company:					
1	Purchased at 35 cents per M.C.F. (Note 1)	$ 7,383.60	21,096	18,576	$ .350	$ .397
2	Purchased at 22½ cents per M.C.F.	83,879.93	373,636	329,004	.225	.255
3	Purchased at 20 cents per M.C.F.	178,789.00	893,945	787,160	.200	.227
4	Purchased at 50% of Revenue (Note 2)	272.34	1,587	1,397	.172	.195
5	Total Colorado Interstate Gas Company	$270,324.87	1,290,864	1,136,137	.210	.238
	Goodstein Pipe Line Company:					
6	Purchased at 10 cents per M.C.F.	4,787.80	47,878	47,878	.100	.100
	Ed Mosher:					
7	Purchased at 10 cents per M.C.F.	319.10	3,191	3,191	.100	.100
8	Total Residential and Commercial Gas Purchased for Resale	$275,431.77	1,341,333	1,187,206	.205	.232

Notes: (1) Represents gas distributed by Public Service Company of Colorado in Edgewater and Mount Air districts.

(2) Represents gas delivered to Green Gables Country Club.

EXHIBIT 202
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Line No.	Description	Year 1933	Year 1936	Year 1937	Year 1938 (Note 1)	Year 1939 (Note 1)	Year 1944 (Note 1)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Transmission Lines:						
1	Superintendence	$ 2,442.50	$ 1,867.50	$ 2,009.00	$ 1,658.20	$ 1,562.00	$ 1,860.80
2	Labor	1,453.30	1,899.10	1,843.05	836.99	1,336.50	1,853.75
3	Superintendence Supplies and Expenses	122.55	230.76	241.87	343.36	357.76	387.99
4	Other Supplies and Expenses	788.56	1,161.32	2,175.66	1,310.59	559.47	642.38
5	Transportation Expense on Industrial Gas Sold to Denver Pressed Brick Company	1,029.72	1,279.00	268.74			
6	Total Transmission Lines Operation	$ 5,836.63	$ 6,437.68	$ 6,537.32	$ 4,129.14	$ 3,811.73	$ 5,301.92
	Compressor Stations:						
7	Superintendence	$ 1,925.00	$ 1,930.10	$ 1,915.00	$ 1,567.50	$ 1,635.20	$ 2,350.05
8	Labor	14,724.00	13,732.50	13,484.73	11,299.90	10,440.05	11,966.00
9	Superintendence Supplies and Expenses	283.28	295.67	268.29	271.20	301.54	346.33
10	Fuel	3,592.75	2,811.65	3,710.29	2,538.26	2,416.68	2,884.39
11	Miscellaneous Supplies and Expenses	1,834.09	1,519.30	1,784.73	1,744.12	1,493.30	1,330.32
12	Total Compressor Stations Operation	$22,359.06	$20,319.22	$21,162.04	$17,410.98	$16,286.77	$18,867.09
	Measuring Stations:						
13	Superintendence	$ 1,898.25	$ 2,197.60	$ 2,070.00	$ 1,828.25	$ 2,249.70	$ 1,974.40
14	Labor	3,843.62	2,638.25	2,320.65	1,659.90	1,518.10	1,709.70
15	Superintendence Supplies and Expenses	532.36	377.14	432.66	724.05	692.48	611.69
16	Other Supplies and Expenses	1,961.49	1,795.11	1,583.63	1,611.97	1,457.67	1,359.91
17	Total Measuring Stations Operation	$ 8,235.72	$ 7,208.10	$ 6,406.94	$ 5,825.07	$ 5,917.95	$ 5,655.66
	General Expenses:						
18	Salary of Vice President and General Manager	$ 4,205.00	$ 4,205.00	$ 4,200.00	$ 3,443.75	$ 3,218.00	$ 3,218.00
19	Salary of Secretary	3,113.00	3,113.00	3,108.00	2,575.85	2,411.84	2,411.84
20	Clerical and Stenographic Salaries	2,617.50	2,570.05	2,410.00	2,175.00	2,039.70	1,905.50
21	General Traveling Expenses	2,547.98	2,023.54	1,825.14	2,217.92	1,510.34	1,315.39
22	Telephone, Telegrams, Postage, Stationery and Office Supplies	447.96	479.34	520.04	431.69	567.62	517.23
23	Office Rent	1,680.00	1,680.00	1,680.00	1,680.00	1,680.00	1,860.00
24	Insurance - General	385.86	384.11	431.39	529.83	537.17	811.72
25	Insurance - Workmen's Compensation and Public Liability	1,174.05	1,182.97	1,273.33	1,202.37	862.53	543.56
26	Management Fees - Public Service Company of Colorado			2,786.01	4,561.31	3,742.68	3,510.67
27	Apportionment of Overhead Expenses of Petroleum Advisers, Inc.	2,999.89	2,572.12				
28	Auditing Expense Charged by Petroleum Advisers, Inc.	134.56	150.62				
29	Auditing Expense Charged by Public Service Company of Colorado			599.28	765.60	90.00	378.06
30	Expenses in connection with Federal Power Commission Reports		220.01				
31	Legal Fees and Expenses	6,728.15	5,362.10	5,640.00	6,728.40	6,908.00	6,903.00
32	Loss on Bad Debts						89.58

EXHIBIT NO. 64

Docket G-124

Schedule B-25
Sheet 2 of 2

COLORADO-WYOMING GAS COMPANY
OPERATION AND GENERAL EXPENSES
YEARS 1934, 1935 AND 1936 - PER BOOKS
YEARS 1937, 1938 AND 1939 - AS ADJUSTED

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Line No.	Description	Year 1939	Year 1938	Year 1937	Year 1936 (Note 1)	Year 1935 (Note 1)	Year 1934 (Note 1)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	General Expenses: (Cont'd)						
33	Welfare	$ 20.84	$ 4.97			$ 180.00	
34	Development and Commercial Salaries and Expenses						
35	Other Miscellaneous Expenses	1,728.44	1,469.25	$ 1,377.50	$ 3,136.05	451.42	
36	Total General Expenses	$26,775.23	$25,141.48	$25,850.69	$29,425.77	$26,274.10	$26,712.59
37	Total Operation and General	$62,804.64	$59,370.48	$59,922.99	$56,790.96	$52,290.85	$55,210.26

Note: (1) Per books subject to minor reclassifications and application of surplus adjustments to period affected.

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Docket G-124

Schedule B-26
Sheet 1 of 1

COLORADO-WYOMING GAS COMPANY
MAINTENANCE EXPENSES
YEARS 1934-1939, INCLUSIVE
(PER BOOKS - NO ADJUSTMENTS PROPOSED)

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Line No.	Description (1)	Year 1939 (2)	Year 1938 (3)	Year 1937 (4)	Year 1936 (5)	Year 1935 (6)	Year 1934 (7)
	Transmission Lines:						
1	Repairs to Transmission Lines - Labor	$1,850.68	$2,362.05	$ 2,083.10	$2,689.90	$1,769.60	$1,277.46
2	Changing Lines - Labor		178.81				
3	Superintendence Supplies and Expenses	54.24	68.44	73.79	46.83	90.39	74.98
4	Repairs to Transmission Lines - Supplies and Expenses	393.83	561.67	6,215.93	473.97	716.51	334.45
5	Changing Lines - Supplies and Expenses			470.50	23.60		
6	Total Transmission Lines Maintenance	$2,299.75	$3,170.97	$ 8,843.32	$3,234.30	$2,576.50	$1,686.83
	Compressor Stations:						
7	Repairs to Engines and Compressors - Labor	$ 499.05	$ 857.55	$ 960.60	$ 782.10	$ 644.75	$ 277.55
8	Repairs to Miscellaneous Compressor Structures - Labor	785.80	407.80	307.85	307.85	612.55	113.70
9	Repairs to Engines and Compressors - Supplies and Expenses	420.42	342.81	293.45	232.61	151.67	55.46
10	Repairs to Miscellaneous Compressor Structures - Supplies and Expenses	345.84	160.92	204.22	102.96	111.20	137.63
11	Total Compressor Stations Maintenance	$2,051.11	$1,769.08	$ 1,766.12	$1,625.52	$1,520.17	$ 584.34
	Measuring Stations:						
12	Repairs to Measuring Station Equipment - Labor	$ 574.80	$ 183.25	$ 268.[illegible]	$ 156.25	$ 170.05	$ 77.65
13	Repairs to Measuring Station Equipment - Supplies and Expenses	134.96	192.63	112.06	202.21	93.33	121.42
14	Total Measuring Stations Maintenance	$ 709.76	$ 375.88	$ 380.66	$ 358.46	$ 263.38	$ 199.07
15	Total Maintenance Expenses	$5,059.62	$5,315.93	$10,990.10	$5,218.28	$4,360.05	$2,470.24

* Includes the following items considered extraordinary maintenance by the Bureau of Engineering per memorandum from Mr. F. W. Copp to Mr. J. V. O'Connor, dated June 10, 1940.

	Reference	Description	Amount
16	Vo. 5906	Repairing welding outfit	$ 35.00
17	T.V. 2423	Enamel, primer, etc.	401.64
18	T.V. 2425	Tar paper	20.13
19	T.V. 2425	Welder, etc.	84.59
20	T.V. 2442	Enamel, primer, etc.	168.81
21	Vo. 6030	Contract work - reconditioning line north of Fort Collins	4,160.25
22	Vo. 6082	Crop damage	23.00
23	Vo. 6107	Crop damage	25.00
24	Vo. 6169	Rent on by-pass pipe	70.05
25	Vo. 6233	Contract work - wrapping line north of Fort Collins and reconditioning Poudre River crossing	589.90
26		Total Extraordinary Maintenance - 1937	$5,578.37

EXHIBIT 202

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Schedule B-7
Sheet 1 of 1

COLORADO-WYOMING GAS COMPANY
ANNUAL TAXES - AS INCURRED
YEARS 1957, 1958 AND 1959

Line No.	Description	Year 1957 Assessment Basis*	Rate	Amount	Year 1958 Assessment Basis*	Rate	Amount	Year 1959 Assessment Basis	Rate	Amount
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
	Property Taxes:									
1	Boulder County, Colorado	$ 165,600.00	$2.47 per $100	$ 4,066.86	$ 165,580.00	$2.50 per $100	$ 4,140.36	$ 148,019.00	$2.43 per $100	$ 3,956.50
2	Weld County, Colorado	86,580.00	2.74 " "	2,376.36	86,460.00	2.64 " "	2,285.38	85,040.00	2.61 " "	2,216.26
3	Arapahoe County, Colorado	38,410.00	2.66 " "	1,038.91	38,370.00	2.58 " "	988.00	34,835.00	2.53 " "	886.71
4	City and County of Denver, Colorado	2,580.00	3.93 " "	100.66	2,580.00	3.79 " "	95.51	2,130.00	3.85 " "	82.01
5	Jefferson County, Colorado	388,670.00	3.51 " "	10,180.67	388,870.00	3.55 " "	10,850.84	382,450.00	3.60 " "	10,178.23
6	Adams County, Colorado	1,180.00	3.00 " "	35.42	1,180.00	3.03 " "	35.79	1,150.00	3.07 " "	35.29
7	Larimer County, Colorado	267,660.00	2.95 " "	7,851.97	267,890.00	2.85 " "	7,619.11	261,980.00	2.88 " "	7,555.09
8	Laramie County, Wyoming	20,180.00	2.50 " "	504.10	28,535.00	2.59 " "	583.66	24,891.00	2.56 " "	656.16
9	Automobile Ownership - Denver	1,889.33	3%	56.68	1,215.66	3%	36.47			
10	Total Property Taxes	$ 868,019.33	$3.01 per $100	$ 26,155.43	$ 865,280.66	$3.01 per $100	$ 26,065.32	$ 834,599.00	$3.00 per $100	$ 25,055.25
	Payroll Taxes:									
11	Unemployment Insurance	$ 40,150.00	3%	$ 1,204.51	$ 38,357.75	3%	$ 1,150.73	$ 37,708.68	3%	$ 754.18
12	Old Age Pension	38,660.00	1%	386.10	35,357.75	1%	353.58	34,708.68	1%	347.09
13	Total Payroll Taxes			$ 1,590.61			$ 1,504.31			$ 1,101.27
	Miscellaneous Taxes:									
14	Federal Capital Stock	$1,587,154.50	$1.00 per M	$ 1,587.00	$1,558,527.91	$1.00 per M	$ 1,538.00	$1,534,721.54	$1.00 per M	$ 1,535.00
15	Corporation License - Colorado	1,399,700.86	.10 per M	139.76	1,418,165.57*	.10 per M	141.92	1,450,078.27*	.10 per M	145.82
16	Occupation - City of Fort Collins, Colorado	Flat rate		350.00	Flat rate		350.00	Flat rate		350.00
17	Colorado Sales and Service Taxes -	9,955.00	2%	181.06	8,860.00	2%	160.80	11,798.00	2%	235.96
18	Filing Annual Report Fee, Colorado	Flat rate		5.00	Flat rate		5.00	Flat rate		5.00
19	Total Miscellaneous Taxes			$ 2,262.82			$ 2,195.72			$ 2,271.78
20	Total General Taxes			$29,249.16			$29,765.85			$28,816.60

*Represents assessment basis for fiscal year beginning May 1.

EXHIBIT 202

Exhibit No. 124

Schedule No. 2
Sheet 1 of 3

COLORADO-WYOMING GAS COMPANY
WORKING CAPITAL REQUIREMENTS
BASED ON OPERATIONS DURING THE YEAR 1939

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Line No.	Particulars		Total	Transmission Other than Compressing	Transmission Compressing System	Distribution
	(1)		(2)	(3)	(4)	(5)
1	Material and Supplies (average monthly balance during the year 1939)	$ 8,483.39				
2	Less, Non-useful material (average monthly balance during the year 1939) (Note 1)	104.50				
3	Net Material and Supplies		$ 8,268.89	$3,846.04	$4,233.67	$ 189.18
	Operating Revenue Deductions					
	Gas purchased for resale (Note 2)					
	Operating Expenses					
4	Operation and general	$62,804.64				
5	Maintenance	5,059.62				
6	Total Operating Expenses	$67,864.26				
	Less, Gas used in operations (Note 2)	4,138.65				
8	Balance	$63,725.61				
9	12½% of above, representing approximately 45 days' operations (Note 5)		7,965.70	1,588.45	4,555.66	1,821.61
	Depreciation (Note 3)					
	Taxes (Note 4)					
	Other Items					
	Line Pack (Note 6)					
	Minimum Bank Balances (Note 7)					
10	Total Working Capital Requirements		$16,234.59	$5,433.47	$8,789.33	$2,011.79

Notes:

(1) Amount representing non-useful material was written off to expense by the company during February 1940.

(2) No allowance is made for gas purchased because revenue from the sale of that gas is, on the average, received before the gas is paid for by Colorado-Wyoming Gas Company.

During 1939 the company purchased approximately 99% of its gas requirements from Colorado Interstate Gas Company. Payments for gas purchased are due Colorado Interstate Gas Company from Colorado-Wyoming Gas Company monthly, on the twentieth day of the month succeeding the end of the billing period which is the twenty-fifth day of the month. Accordingly, on the assumption that customers of Colorado-Wyoming take gas in equal daily quantities, thus making the equated date for the delivery of the month's supply of gas

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Schedule No. 1
Sheet 2 of 3

COLORADO-WYOMING GAS COMPANY
WORKING CAPITAL REQUIREMENTS
BASED ON OPERATIONS DURING THE YEAR 1939

EXHIBIT 203 2

Notes (cont'd)

to them, the tenth of each month, payments are due Colorado Interstate Gas Company, on the average, forty days after that company makes delivery to Colorado-Wyoming 40 days

Revenue - see Schedule No. 2 for computation of lag in payment of bills by customers after delivery of gas or service to them. 30 days

Number of days, on the average, that cash is due from gas sales or service before payment is due for gas purchases 10 days

(3) No allowance is made for depreciation since this expense does not necessitate the disbursement of cash or the use of working capital.

(4) No allowance is made for taxes in working capital as revenues are received in cash, on the average, considerably in advance of the payment of taxes, as shown by the following tabulation relating to 1939 taxes, as adjusted:

Date Paid	Amount
January 1939	$ 443.32
February "	151.33
March "	23.60
April "	342.73
May "	3.44
June "	2.65
July "	405.52
August "	767.97
September "	14.89
October "	393.55
November "	4.89
December "	505.68
Subsequent Year (1940)	54,045.81
Total taxes for 1939, as adjusted	$57,105.58

Docket G-124

Schedule No. 1
Sheet 3 of 3

COLORADO-WYOMING GAS COMPANY
WORKING CAPITAL REQUIREMENTS
BASED ON OPERATIONS DURING THE YEAR 1939

EXHIBIT 203

3

Notes: (cont'd)

(5) An amount equal to 12½% of the company's operating expenses for 1939, or approximately 45 days' expenses of operation, is, in the Examiner's opinion, a liberal allowance to cover operating expenses which must be paid in the interim between the time of initial rendition of service and the time when revenue is received. The amounts of $62,804.64 for operation and general and 5,059.62 for maintenance are taken from Statement B-1 of a report on this company entitled "Income Accounts and Supplemental Data."

(6) No allowance is proposed herein for the average value of gas in the company's transmission lines during 1939 since its records indicate capitalization of the cost of line-pack gas in its plant account. The amount, if any, which might be included in working capital in addition to that capitalized, is insignificant.

(7) No allowance is proposed for minimum bank balances because: (1) A substantial average balance is provided by reason of the lag in payment of gas purchased and taxes after the average date cash is due from gas sales; (2) a small duplication in the proposed allowances for materials and supplies, stock and operating expenses exists, to the extent of 12½% of the charges to operating expenses from the material and supplies accounts.

Docket G-124

Schedule No. 2
Sheet 1 of 1

COLORADO-WYOMING GAS COMPANY
CALCULATION OF WEIGHTED AVERAGE LAG, IN DAYS
BETWEEN THE DATE OF DELIVERY OF GAS OR SERVICE TO CUSTOMERS
AND THE DATE WHEN RELATED REVENUES ARE DUE
BASED ON 1939 REVENUES

Customers (1)	Last Day of Billing Period (2)	Date Due in Following Month (3)	Lag in number of days between the time of delivery of gas or service to customers, as equated, and date when related revenues are due (a) (4)	Revenue for 1939 (5)	Dollar Days (6)
Miscellaneous right-of-way customers	25th	10th	30	$ 1,377.17	41,315
Green Gables Country Club	25th	10th	30	676.94	20,308
Adolph Coors Company	25th	10th	30	3,507.63	105,229
Board of Water Commissioners of Denver	25th	10th	30	1,894.56	56,837
Colorado Portland Cement Company	25th	10th	30	121,860.24	3,655,807
Continental Oil Company	25th	10th	30	800.64	24,019
Denver Pressed Brick Company	25th	10th	30	9,707.46	291,224
Great Western Sugar Company	25th	10th	30	68,244.11	2,047,323
Golden Fire Brick Company	25th	10th	30	10,821.06	324,632
Kuner-Empson Company	25th	10th	30	7,982.00	239,460
Producers Canning Company	25th	10th	30	125.32	3,760
Valmont Electric Plant of Public Service Company of Colorado	25th	10th	30	3,403.99	102,120
Thomas Bate & Sons	25th	10th	30	38.40	1,152
U.S. War Department, Ft. Logan	25th	10th	30	3,510.40	105,312
U.S. War Department, Ft. Warren	25th	10th	30	7,410.80	222,324
Greeley Gas and Fuel Company	25th	10th	30	63,664.56	1,909,937
Highway Gas Company	25th	15th	35	693.62	24,270
Public Service Company of Colorado	25th	10th	30	333,067.80	9,992,034
Cheyenne Light, Fuel and Power Company	25th	10th	30	182,151.72	5,464,552
Readiness-to-serve charge, Public Service Company of Colorado Valmont Plant	30th	10th	25	8,000.00	200,000
Miscellaneous revenues				3.08	
Totals				$828,241.50	24,831,615
Weighted average lag, in days			30		

(a) The lag consists in the number of days between the last day of billing period (column 2) and date due in following month (column 3), plus fifteen days as determined on the basis of the assumption stated in Note 2 of Schedule No. 1.

EXHIBIT 203

Docket G-124

Statement A-1
Sheet 1 of 2

COLORADO-WYOMING GAS COMPANY
BALANCE SHEET PER BOOKS AND AS ADJUSTED
DECEMBER 31, 1939

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Line No.	Description	Per Books*	Adjustments Debit	Adjustments Credit	As Adjusted	Schedule Reference
	(1)	(2)	(3)	(4)	(5)	(6)
	Assets and Other Debits					
	Utility Plant					
1	Gas Plant in Service	$1,860,551.93	$ 36,952.69	$ 232,473.26	$1,665,031.36	
2	Gas Plant Held for Future Use		4,430.67		4,430.67	
3	Gas Plant Adjustments		86,731.55		86,731.55	
4	Total Utility Plant	$1,860,551.93	$ 128,114.91	$ 232,473.26	$1,756,193.58	
	Investments in Associated Companies					
5	Advances to Public Service Company of Colorado	$ 98,335.29			$ 98,335.29	A-12
6	Capital Stock of Petroleum Advisers, Inc., 20 shares, at cost	$ 2,000.00			$ 2,000.00	
	Current and Accrued Assets					
7	Cash	$ 79,820.44			$ 79,820.44	
8	Accounts Receivable	29,618.98			29,618.98	
	Receivables from Associated Companies:					
9	Cheyenne Light, Fuel & Power Co.	19,941.79			19,941.79	
10	Public Service Company of Colorado	39,379.07			39,379.07	
11	Material and Supplies	8,286.36	$ 1,800.00	$ 1,800.00	8,286.36	
12	Prepayments	475.26			475.26	
13	Total Current and Accrued Assets	$ 177,521.90	$ 1,800.00	$ 1,800.00	$ 177,521.90	
	Deferred Debits					
14	Rate Case Expenses		$ 14,281.66		$ 14,281.66	A-13
15	Capital Stock Expenses		$ 815.76		$ 815.76	
16	Total Assets and Other Debits	$2,138,409.12	$ 145,012.33	$ 234,273.26	$2,049,148.19	

EXHIBIT 204

COLORADO-WYOMING GAS COMPANY
BALANCE SHEET PER BOOKS AND AS ADJUSTED
DECEMBER 31, 1939

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Liabilities and Other Credits

Line No.	Description	Per Books	Adjustments Debit	Adjustments Credit	As Adjusted	Schedule Reference
	(1)	(2)	(3)	(4)	(5)	(6)
17	Common Capital Stock	$1,501,000.00			$1,501,000.00	A-14
	Current and Accrued Liabilities					
	Accounts Payable:					
18	Colorado Interstate Gas Co.	$ 53,028.11			$ 53,028.11	
19	Other	1,519.46		$ 279.30	1,798.76	
	Taxes Accrued:					
20	Federal Income - 1939	24,331.96	$ 121.41		24,210.55	
21	Federal Income - 1935 and 1936	6,007.54	1,215.44		4,792.10	
22	Colorado State Income - 1939	3,300.00	354.13		2,945.87	
23	General	26,838.88	255.97	765.30	27,348.21	
	Expenses Accrued:					
24	Audit Fee	350.00			350.00	
25	Legal	375.05			375.05	
26	Total Current and Accrued Liabilities	$ 115,751.00	$ 1,946.95	$ 1,044.60	$ 114,848.65	
	Deferred Credit					
27	Advanced for Construction	$ 2,982.14	$ 2,982.14			
	Reserves					
28	Reserve for Depreciation of Gas Plant in Service	$ 486,405.67	$ 537,712.69	$ 444,970.27	$ 393,663.25	
29	Reserve for Depreciation of Gas Plant Held for Future Use			118.35	118.35	
30	Total Reserves	$ 486,405.67	$ 537,712.69	$ 446,088.62	$ 393,781.60	
31	Contributions in Aid of Construction	$ 9,193.83		$ 2,989.39	$ 12,183.22	A-15
32	Earned Surplus	$ 23,076.48	$ 546,668.61	$ 550,926.85	$ 27,334.72	A-16
33	Total Liabilities and Other Credits	$2,138,409.12	$1,089,310.39	$1,000,049.16	$2,049,148.19	

EXHIBIT 204

2

Docket G-12

COLORADO-WYOMING GAS COMPANY
SUMMARY OF EXAMINER'S ADJUSTING ENTRIES APPLIED TO BALANCE SHEET
DECEMBER 31, 1939

Entry No.	Particulars	Utility Plant: Gas Plant in Service	Gas Plant Held for Future Use	Gas Plant Adjustments	Current and Accrued Assets: Material and Supplies	Deferred Debits: Rate Case Expenses	Capital Stock Expense	Current and Accrued Liabilities: Accounts Payable-Other	Taxes Accrued: Federal Income 1939	Federal Income 1935 and 1936	Colorado State Income - 1939
	(1)	(2)	(3)	(3a)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	Reclassification of advance for construction received from International Metal Foundation										
105	Rate case expenses					$14,079.16					
106	Overaccrual of 1939 Federal income tax								$121.41		
107	Overaccrual of 1939 Colorado state income tax										$354.13
108	Underaccrual of 1939 property taxes										
110	Gas used incidental to pipe inspection					202.50					
111	Apportionment of Petroleum Advisors, Inc., expense, December 1939							$(279.30)			
116	Overaccrual of 1938 property taxes										
118	Correction of gas purchased for 1938										
121	Overaccrual of 1937 property taxes										
125	Overaccrual of 1935 and 1936 Federal income taxes									$1,215.44	
200	Elimination of interest on excess capacity	$ (79,362.52)									
201	Elimination of arbitrary percentages of 1939 and 1940 general expenses	(5,714.74)									
202	Elimination of 5% engineering fees	(88,792.57)		$83,806.65							
203	Elimination of certain legal fees	(8,250.00)									
204	Elimination of cash discounts retained by Cities Service Co.	(2,844.90)		2,844.90							
205	Elimination of interest during construction	(85,718.50)									
206	Interest during construction recommended for allowance	14,978.74									
207	Elimination of officers' traveling expenses	(543.32)									
208	Elimination of expenses in acquiring town border service at Greeley, Colorado	(375.00)									
210	Elimination of ledger, journal, filing fees, etc.	(119.36)									
211	Elimination of director's fees, taxes, etc.	(1,017.76)							$815.76		
212	To transfer facilities for serving International Metal Foundation	(4,430.67)	$4,430.67								
213	Adjustment of transfer of compressing station equipment	21,944.21			$(1,800.00)						
214	Elimination of 5% engineering fees from preceding entry	(948.97)									
215	Restatement of transfer of compressing station equipment	(14,205.97)			1,800.00						
216	Adjustment of company's Transfer Voucher 1413 in connection with transfer of compressing station equipment	(3,510.73)									
217	Adjustment of interest during construction applicable to transfer of compressing station equipment	(125.07)									
218	Retirement of compressing station equipment not used or useful	(3,154.24)									
219	Retirement of compressing station equipment not used or useful	(1,007.31)									
222	Retirement cost of abandoned meter vault	(51.63)									
225	Adjustment of excess retirement of transportation equipment	29.74									
400	To reverse the annual depreciation provisions, per books										
401	Adjustment of land costs retired										
402	To record adjusted annual depreciation										
	Total debits	$1,254,382.72									
	Total credits	(1,254,382.72)									
		$ 38,992.89	$4,430.67	$86,751.55	$ 1,800.00	$14,281.66	$815.76		$121.41	$1,215.44	$354.13
		(232,473.26)			(1,800.00)			$(279.30)			

EXHIBIT 204

Schedule A-10
Sheet 1 of 1

3

COLORADO-WYOMING GAS COMPANY
SUMMARY OF EXAMINER'S ADJUSTING ENTRIES APPLIED TO BALANCE SHEET
DECEMBER 31, 1939

Current and Accrued Assets			Current and Accrued Liabilities					Deferred Credit	Reserves			
				Taxes Accrued								
Material and Supplies (5)	Deferred Debits Rate Case Expenses (6)	Capital Stock Expense (7)	Accounts Payable-Other (8)	Federal Income 1939 (9)	Federal Income 1935 and 1936 (10)	Colorado State Income - 1939 (11)	General (12)	Advances for Construction (13)	Reserve for Depreciation of Gas Plant in Service (14)	Reserve for Depreciation of Gas Plant Held for Future Use (15)	Contributions in Aid of Construction (16)	Income Account (Earned Surplus) (17)
								$2,982.14			$(2,982.14)	
	$14,079.16											$ (14,079.16)
				$121.41								(121.41)
						$354.13						(354.13)
							$(765.30)					765.30
	202.50											(202.50)
			$(279.30)									279.30
							211.11					(211.11)
							44.86				(7.25)	7.25
					$1,215.44							(44.86)
												(1,215.44)
												79,362.52
												5,714.74
									$ (1,094.08)			8,250.00
												23,718.50
												(14,978.74)
												543.32
												375.00
												119.36
												202.00
			$815.76									
$(1,800.00)									(20,144.21)			
									548.97			
1,800.00									12,405.97			
												3,510.73
									125.07			
									3,454.84			
									1,087.31			
									51.68			
									(89.74)			
									519,719.50			(519,719.50)
									(85.00)			85.00
									(485,617.84)	$(118.35)		423,735.59
$ 1,800.00	$14,281.66	$815.76		$121.41	$1,215.44	$354.13	$ 255.97	$2,982.14	$ 537,712.69			$ 546,668.61
(1,800.00)			$(279.30)				(765.30)		(484,970.27)	$(118.35)	$(2,989.39)	(550,926.85)

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Docket G-124

Schedule A-11
Sheet 1 of 1
EXHIBIT 204

COLORADO-WYOMING GAS COMPANY
EXAMINER'S ADJUSTING ENTRIES
BALANCE SHEET - DECEMBER 31, 1939

Particulars	Debit	Credit
No. 1		
Advances for Construction	$2,982.14	
Contributions in Aid of Construction		$2,982.14

The contract dated April 8, 1937 under which service to the U. S. Metal Foundation (name subsequently changed to International Metal Foundation) was undertaken provided for an advance in the amount of $3,000.00 for construction purposes, which was paid to Colorado-Wyoming Gas Company. The company agreed "to refund to the customer said sum of $3,000, without interest, payable at the rate of ~~5¢~~ for each thousand cubic feet of gas sold and delivered by the company to the customer, except that, in the event gas service to the plant of the customer is discontinued before such time as the customer shall have purchased and paid for 600,000 M.C.F. of gas, then any unrefunded portion of said $3,000 shall be forfeit to the company unless such discontinuance of gas service shall have been due to inability of the (gas) company to further continue service in which event any unrefunded portion of said $3,000 shall immediately become due and payable to the customer." Service to the International Metal Foundation was discontinued in September 1938. The unrefunded portion of the advance for construction according to the company's books as of December 31, 1939 was $2,982.14, the difference of $17.86 having been applied to deliveries of gas prior to discontinuance of service.

Service to the International Metal Foundation was discontinued due to the inability of the customer to pay its account. Therefore, according to the terms of the above-mentioned contract, the amount of $2,982.14 has been forfeited to the Colorado-Wyoming Gas Company. The Commission's Uniform System of Accounts for Natural Gas Companies provides "when a customer is refunded the entire amount to which he is entitled, according to the agreement or rule under which the advance was made, the balance, if any, remaining in the account (241, Customers' Advances for Construction) shall be transferred to Account 265, Contributions in Aid of Construction" (pages 30-31 thereof).

Exhibit G-12A

Schedule A-12
Sheet 1 of 1

COLORADO-WYOMING GAS COMPANY

SUMMARY OF ADVANCE ACCOUNT - PUBLIC SERVICE COMPANY OF COLORADO

Line No.	Description	Total - Sept. 1, 1951 to Dec. 31, 1959	Detail by Periods: Year 1957	Year 1956	Year 1955	Year 1954	Year 1953	Year 1952	Sept. 1, 1951 to Dec. 31, 1951
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	Debits:								
	Cash Remittances and Advances from Colorado-Wyoming Gas Company to Public								
1	Service Company of Colorado	$955,000.00	$ 5,000.00	$145,000.00	$147,000.00	$161,000.00	$194,000.00	$297,000.00	$66,000.00
2	Interest Added to Account	19,813.69	5,154.29	6,690.74	2,005.18	1,688.07	688.31	3,573.19	315.91
3	Readiness-to-Serve Charge at Valmont Plant	16,000.00	8,000.00	8,000.00					
	Subscription to Capital Stock (transferred from Charge Against Original								
4	Subscribers)	1,000.00							
5	Other Charges	2,451.58						1,000.00	
6	Total Debits	$993,265.27	$18,154.29	$159,690.74	$149,005.18	$162,688.07	$194,688.31	$301,573.19	$66,315.91
	Credits:								
	Balance Transferred from Henry L. Doherty & Company, Fiscal Agent Account, as								
7	of August 31, 1951	$ 3,870.26							$ 3,870.26
8	Dividends Credited to Account	705,000.00			$127,500.00	$140,000.00	$178,500.00	$297,500.00	57,500.00
9	Interest Credited to Account	1,089.72				91.50	991.22		
10	Cash Payments by Public Service Company of Colorado to Colorado-Wyoming Gas Company	105,000.00	$ 5,000.00	$100,000.00					
	Credit for Subscription to Capital Stock (Amount Deducted by Colorado-Wyoming Gas Company from Settlement of Bills								
11	Paid Currently)	1,000.00							
12	Other Credits	10.00	10.00					1,000.00	
13	Total Credits	$814,969.98	$ 5,010.00	$100,000.00	$127,500.00	$140,091.50	$179,491.22	$298,500.00	$61,370.26
14	Balance, December 31, 1959	$178,295.29	$13,144.29	$ 59,690.74	$ 21,505.18	$ 22,596.57	$ 15,197.09	$ 3,073.19	$ 4,945.65

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EXHIBIT 204

Docket G-124

Schedule A-13
Sheet 1 of 1

COLORADO-WYOMING GAS COMPANY
RATE CASE EXPENSE - DECEMBER 31, 1959
(TRANSFERRED TO DEFERRED DEBITS BY EXAMINER)

Line No.	Description	Total	Inventory and Valuation Work			Pipe Line Inspection			Legal Fees	Miscellaneous
			Charged by Petroleum Advisers, Inc.	Charged by Public Service Company of Colorado	Other Charges	Charged by Petroleum Advisers, Inc.	Charged by Public Service Company of Colorado	Other Charges		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
	Services of:									
1	E. H. Barnes (May to October)	$ 1,967.08	$1,967.08							
2	E. E. Crist (March and October)	135.87	135.87							
3	E. D. Grothusen (June to November)	87.69	87.69							
4	J. L. Millard (July to September)	611.62	611.62							
5	E. G. Leer (June to August)	507.70		$699.20	$ 8.50					
6	W. B. Gardiner (October to December)	355.00			355.00					
7	E. D. Hancock (September and October)	713.57				$ 713.57				
8	F. W. Stoddart (September and October)	513.54				513.54				
9	Retainer Fee - Lee, Shaw & McCreery	7,500.00							$7,500.00	
	Contract Work - Pioneer Construction and Engineering Corporation:									
10	Digging 81 holes at $12.00	972.00						$ 972.00		
11	Extra work locating pipe and miscellaneous	108.00						108.00		
12	Labor and Material - Cutting out coupons for line tests	178.95					$178.95			
13	Telephone and Telegrams	114.48	95.84		1.84					$16.80
14	Meals and Hotel Expense	72.63			7.10			65.53		
15	Postage and Express	13.86	7.60			5.66				
16	Stationery and Forms	79.71		18.16	16.90			46.05		
17	Automobile Expenses	46.58			36.90			9.68		
18	Stores Issues - Pipe, paint, plugs, etc.	52.92						52.92		
19	Gas Used (1778 M.C.F. at 12½ cents)	222.24						222.24		
20	Miscellaneous and Incidental	29.62						27.12		2.50
21	Totals	$14,281.66	$2,904.90	$817.36	$425.84	$1,232.77	$178.95	$1,502.54	$7,500.00	$19.30
	Recapitulation:									
22	Inventory and Valuation Work	$ 3,848.10								
23	Pipe Line Inspection	2,911.26								
24	Legal Fees	7,500.00								
25	Miscellaneous	19.30								
26	Total	$14,281.66								

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EXHIBIT 204

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Docket G-124

Schedule A-14
Sheet 1 of 1
EXHIBIT 204

COLORADO-WYOMING GAS COMPANY
SCHEDULE OF CAPITAL STOCK
AS OF DECEMBER 31, 1939

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Name of Issue:	Capital Stock	
Par Value:	Without Par Value	
Number of Shares Authorized:	50,000	
Number of Shares Issued and Outstanding:	50,000	
Balance in Capital Stock Account:		
	Shares	Amount
Original Subscription, Dec. 1, 1925	10	$ 1,000.00
In Part Consideration of Transfer of Contract from H. O. Caster, Dec. 18, 1925	4,990	None
Stock Dividend Distributed Dec. 21, 1931	45,000	1,500,000.00
Totals	50,000	$1,501,000.00

Holder of Record: Chase National Bank of the City of New York, Successor Trustee under Public Service Company of Colorado Trust Indenture dated September 1, 1923 - 50,000 shares. (Certificate stubs dated February 6, 1932.)

Miscellaneous: The canceled certificates surrendered by Public Service Company of Colorado when the shares were transferred to Chase National Bank, Trustee, as of February 6, 1932, each bear the following notation in connection with the transfer:

"This transfer is made solely to pledge the shares represented by this certificate as collateral under Public Service Company of Colorado Trust Indenture dated September 1, 1923.
Public Service Company of Colorado
By E. E. McWhinney (Signed)
Asst. Treasurer."

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COLORADO-WYOMING GAS COMPANY
CONTRIBUTIONS IN AID OF CONSTRUCTION - AS ADJUSTED

Line No.	As Of (1)	Adjusted Balance (2)	Contributors: Colorado Interstate Gas Company (3)	Kuner-Empson Company (4)	Public Service Company of Colorado (5)	Lutheran Sanitarium (6)	International Metal Foundation (7)	C.N. Bell (8)	C.S. Northup (9)
1	December 31, 1929	$ 35.50	$ 35.50						
2	December 31, 1930	286.10	286.10						
3	December 31, 1931	814.60	814.60						
4	December 31, 1932	1,431.95	1,431.95						
5	December 31, 1933	2,083.65	2,083.65						
6	December 31, 1934	3,478.65	2,628.65	$850.00					
7	December 31, 1935	4,038.90	3,188.90	850.00					
8	December 31, 1936	4,629.80	3,779.80	850.00					
9	December 31, 1937	5,562.30	4,485.80	850.00	$226.50				
10	December 31, 1938	12,002.66	7,614.02	850.00	$226.50	$330.00	$2,982.14		
11	December 31, 1939	12,183.22	7,614.02	850.00	226.50	330.00	2,982.14	$155.56	$25.00

EXHIBIT

EXHIBIT 204

Docket G-124

Schedule A-16
Sheet 1 of 1

COLORADO-WYOMING GAS COMPANY
RECONCILIATION OF SURPLUS PER BOOKS WITH SURPLUS AS ADJUSTED
DECEMBER 31, 1939

Entry No.	Particulars	Amount Debit	Amount Credit
	(1)	(2)	(3)
	Surplus per books, December 31, 1939		$ 23,076.48
105	To set up as a deferred debit the expenses applicable to the rate investigation by the Federal Power Commission		14,079.16
106	Overaccrual of 1939 Federal income tax		121.41
107	Overaccrual of 1939 Colorado state income tax		354.13
108	Underaccrual of 1939 property taxes	$ 765.30	
110	Gas used incidental to pipe inspection		202.50
111	Apportionment of Petroleum Advisers, Inc. expenses, December 31, 1939	279.30	
116	Overaccrual of 1938 property taxes		211.11
118	Correction of gas purchased for 1938	7.25	
121	Overaccrual of 1937 property taxes		44.86
123	Overaccrual of 1935 and 1936 Federal income taxes		1,215.44
200	To adjust interest on excess capacity capitalized	79,362.52	
201	To charge arbitrary percentages of 1929 and 1930 general expenses capitalized to expense	5,714.74	
203	To charge legal fees capitalized to expense	8,250.00	
205	To reverse interest during construction capitalized	23,718.50	
206	To record adjusted interest during construction		14,978.74
207	To charge officers' traveling expenses capitalized to expense	543.32	
208	To charge expenses capitalized re town border service at Greeley, Colorado to expense	375.00	
210	To charge ledger, journal, filing fees, etc., capitalized to expense	119.36	
211	To charge directors' fees and filing fees capitalized to expense	202.00	
216	To charge expenses incurred in moving compressing station equipment to maintenance expense	3,510.73	
400	To reverse the annual depreciation provisions, per books		519,719.50
401	Adjustment of land costs retired	85.00	
402	To record adjusted annual depreciation	423,735.59	
	Surplus as adjusted, December 31, 1939 (credit balance)	27,334.72	
		$574,003.33	$574,003.33

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STATEMENT OF INCOME AND SURPLUS ACCOUNTS, AS RECLASSIFIED
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 1940 AND 1939 AND COMPARISON

Description	Nine Months Ended September 30 1940 Amount	1940 Cents Per MCF	1939 Amount	1939 Cents Per MCF	Increase or (Decrease) Amount	Increase or (Decrease) Cents Per MCF
MCF Purchased (at 14.65 lbs. per square inch absolute)	1,936,486		2,064,179		(127,693)	
Operating Revenues	$580,650.15	29.98	$583,968.89	28.29	$(3,318.74)	1.69
Operating Revenue Deductions						
Gas Purchased for Resale	$364,195.08	18.81	$346,693.44	16.80	$ 17,501.64	2.01
Operation and General	46,406.52	2.40	46,793.89	2.26	(387.37)	.14
Maintenance	7,842.56	.40	3,804.84	.18	4,037.72	.22
Depreciation	21,000.00	1.08	21,000.00	1.02		.06
Taxes - General	24,525.79	1.27	22,661.65	1.10	1,862.14	.17
Taxes - Federal Income	18,000.32	.93	17,104.00	.83	896.32	.10
Taxes - Colorado State Income	1,895.37	.10	2,475.00	.12	(579.63)	(.02)
Total Operating Revenue Deductions	$483,865.64	24.99	$460,532.82	22.31	$ 23,330.82	2.68
Utility Income	$ 96,786.51	4.99	$123,436.07	5.98	$(26,649.56)	(.99)
Other Income						
10% Dividend from amount in Closed Banks	$ 27.28				$ 27.28	
Interest Received on Advances to Public Service Company of Colorado	4,485.12	.23	$ 4,485.12	.21	-	.02
Total Other Income	$ 4,512.40	.23	$ 4,485.12	.21	$ 27.28	.02
Gross Income	$101,298.91	5.22	$127,921.19	6.19	$(26,622.28)	(.97)
Income Deductions						
Other Interest Charges	$ 1,102.78	.05	$ 662.84	.03	$ 439.94	.02
Net Income	$100,196.13	5.17	$127,258.35	6.16	$(27,062.22)	(.99)

Surplus Account

	1940	1939
Surplus at beginning of year	$ 37,358.14	$ 26,154.50
Net Income, nine months ended September 30	100,196.13	127,258.35
Net Income, three months ended December 31		53,945.29
Total	$137,554.27	$207,358.14
Deduct		
Dividends paid in cash, nine months ended September 30	102,500.00	112,500.00
Dividends paid in cash, three months ended December 31		57,500.00
Surplus at end of period	$ 35,054.27	$ 37,358.14

Note: The only reclassifications applied to the book figures for the nine months ended September 30, 1940 and 1939 are those affecting rate case expenses. See Schedule No. 4 for detail.

EXHIBIT 205

Docket G-124

Schedule No. 6

COLORADO-WYOMING GAS COMPANY

STATEMENT OF OPERATION, GENERAL AND MAINTENANCE EXPENSES, AS RECLASSIFIED
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 1940 AND 1939 AND COMPARISON

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Particulars	Nine Months Ended September 30 1940	1939	Increase or (Decrease)
Operation and General:			
Transmission Lines	$ 5,717.29	$ 2,826.81	$ 2,890.48
Compressing Stations	14,212.09	15,986.24	$(1,774.15)
Measuring Stations	$ 2,160.75	$ 6,062.39	$(901.64)
General Expenses:			
Executive Salaries	$ 3,150.00	$ 3,150.00	"
Clerical Salaries	4,555.50	4,251.00	$ 304.50
Legal Fees and Expenses	3,615.35	4,985.60	(1,370.25)
Traveling Expenses	664.97	1,210.60	(545.63)
General Incidental Expenses	3,865.08	3,105.26	759.82
Insurance - General	254.81	290.53	(35.72)
Insurance - Workman's Compensation and Public Liability	946.36	893.29	53.07
Apportionment Petroleum Advisers, Inc., Expenses	2,656.82	2,753.21	(96.39)
Office Rent	1,597.50	1,260.00	337.50
Welfare	10.00	18.66	(8.66)
Total General Expenses	$21,316.39	$21,918.15	$ (601.76)
Total Operation and General	$46,406.52	$46,793.89	$ (387.37)
Maintenance:			
Transmission Lines	$ 6,142.31	$ 1,589.15	$ 4,553.16
Compressing Stations	1,676.87	1,705.72	(28.85)
Measuring Stations	23.38	509.97	(486.59)
Total Maintenance	$ 7,842.56	$ 3,804.84	$ 4,037.72
Total Operation, General and Maintenance	$54,249.08	$50,598.73	$ 3,650.35

Note: Rate case expenses for the periods indicated have been transferred to the deferred debit caption on the balance sheet. The amounts representing these expenses for the nine months ended September 30, 1940 and 1939 were respectively $4,623.05 and $7,885.32.

EXHIBIT 205

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Docket G-124

Schedule No. 3

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COLORADO-WYOMING GAS COMPANY
BALANCE SHEET, AS RECLASSIFIED
SEPTEMBER 30, 1940

Assets and Other Debits	
Utility Plant	
Gas Plant in Service	$1,894,421.54
Investment in Associated Companies	
Advances to Public Service Company of Colorado	$ 98,335.29
Capital Stock of Petroleum Advisers, Inc., 20 shares at cost	2,000.00
Total Investment in Associated Companies	$ 100,335.29
Current and Accrued Assets	
Cash	$ 69,793.61
Accounts Receivable	25,998.99
Receivables from Associated Companies	
Cheyenne Light, Fuel and Power Co.	10,153.76
Public Service Co. of Colorado	18,355.82
Material and Supplies	8,194.25
Prepayments	2,304.21
Total Current and Accrued Assets	$ 134,800.64
Deferred Debits	
Rate Case Expenses (See footnote)	$ 18,904.71
Total Assets and Other Debits	$2,148,462.18

Liabilities and Other Credits	
Common Capital Stock	$1,501,000.00
Current and Accrued Liabilities	
Accounts Payable	
Colorado Interstate Gas Co.	$ 31,770.78
Other	12,883.08
Taxes Accrued	
Federal Income	25,459.20
Colorado State Income	3,722.93
General	21,177.09
Expenses Accrued	
Audit Fee	240.00
Insurance	496.64
Total Current and Accrued Liabilities	$ 95,749.72
Reserves	
Reserve for Depreciation of Gas Plant in Service	$ 504,482.22
Advances for Construction	$ 2,982.14
Contributions in Aid of Construction	9,193.83
Total	$ 12,175.97
Earned Surplus (See footnote)	$ 35,054.27
Total Liabilities and Other Credits	$2,148,462.18

Note: The only reclassification applied to the Balance Sheet per books at September 30, 1940 follows:

Dr: Deferred Debits - Rate Case Expenses		$18,904.71	
Cr: Surplus			$18,904.71
1939 Operating Expenses	$14,281.66		
1940 Operating Expenses	4,623.05		
	$18,904.71		

EXHIBIT 205

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Schedule No. 4

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COLORADO-WYOMING GAS COMPANY
DEFERRED RATE CASE EXPENSES - SEPTEMBER 30, 1940

Particulars	Total	Inventory and Valuation Work: Charged by Petroleum Advisors, Inc.	Inventory and Valuation Work: Charged by Public Service Company of Colorado	Inventory and Valuation Work: Other Charges	Pipe Line Inspection: Charged by Petroleum Advisors, Inc.	Pipe Line Inspection: Charged by Public Service Company of Colorado	Pipe Line Inspection: Other Charges	Legal Fees	Miscellaneous
Rate Case Expenses - Year 1939:									
Nine months ended Sept. 30	$ 7,885.32	$1,820.02	$496.00	$ 433.19			$ 129.01	$5,000.00	$ 7.10
Three months ended Dec. 31	6,396.34	1,084.88	21.36	(7.35)	$1,232.77	$178.95	1,373.53	2,500.00	12.80
Rate case expenses to Dec. 31, 1939 as shown in Schedule A-13 of Exhibit on Balance Sheet and Supplemental Data	$14,281.66	$2,904.90	$517.36	$ 425.84	$1,232.77	$178.95	$1,502.54	$7,500.00	$19.30
Rate case expenses January 1, 1940 to September 30, 1940:									
Services of:									
E. M. Harmes	$ 1,272.25	$1,272.25							
H. D. Grothusen	316.63				$ 316.63				
H. D. Hancock	374.30				374.30				
F. W. Stoddart	4.02				4.02				
J. L. Willard	299.31	299.31							
J. J. C. Jaye	14.12	14.12							
F. M. Cropper	1,168.19	1,168.19							
W. R. Gardiner	1,125.00			$1,125.00					
Telegrams	2.36			2.36					
Express	.50			.50					
Stationery and Supplies	46.37								46.37
Total	$ 4,623.05	$2,753.87		$1,127.86	$ 694.95				$46.37
Total Rate Case Expenses to September 30, 1940	$18,904.71	$5,658.77	$517.36	$1,553.70	$1,927.72	$178.95	$1,502.54	$7,500.00	$65.67

The rate case expenses deferred at September 30, 1940 were removed from the following income accounts:

Acct. 932.2	Transmission line operation	$ 202.50
Acct. 991	Regulatory Commission Expense	18,702.21
	Total	$18,904.71

EXHIBIT 205

Docket G-121

Schedule No. 5

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COLORADO-WYOMING GAS COMPANY
GAS PLANT IN SERVICE
SEPTEMBER 30, 1940

Particulars	Per Books: Balance Dec. 31, 1939	Changes: Additions	Changes: Retirements	Balance Sept. 30, 1940
Intangible Plant				
Organization	$ 3,472.28			$ 3,472.28
Transmission Plant				
Main Line	$1,185,100.32	$ 219.04		$1,185,319.36
Lateral Lines	374,934.47			374,934.47
Compressing Stations	202,572.47			202,572.47
Land Owned in Fee	5,262.30	1,207.21		6,469.51
Structures and Improvements		1,332.62		1,332.62
Pumping and Regulating Equipment		30,678.70		30,678.70
Total	$1,767,869.56	$33,437.57		$1,801,307.13
General Plant				
Transportation Equipment	$ 4,668.61	$ 2,223.74	$1,839.04	$ 5,053.31
Office Furniture and Equipment	3,415.25			3,415.25
Miscellaneous Tools	1,264.97	30.58		1,295.55
Communication Equipment	498.74			498.74
Total	$ 9,847.57	$ 2,254.32	$1,839.04	$ 10,262.85
Other				
Interest on Excess Capacity	$ 79,362.52			$ 79,362.52
Plant in Process of Reclassification		$ 16.76		16.76
Total	$ 79,362.52	$ 16.76		$ 79,379.28
Total Gas Plant in Service	$1,860,551.93	$35,708.65	$1,839.04	$1,894,421.54

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EXHIBIT 205

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ELECTRIC OPERATING UTILITY PREFERRED STOCKS SOLD IN YEARS 1,35 TO 1939, INCLUSIVE

COST OF MONEY TO ISSUING COMPANIES AND YIELD TO PURCHASERS

Company	Offering Date	Issue	Number of Shares	Net Price to Company: Per Share	Net Price to Company: Total	Net Price to Company: Cost %	Price to Public: Per Share	Price to Public: Total	Price to Public: Yield %
Cleveland Electric Illuminating Co., The	October 1935	Cumulative Preferred, $4.50, no par	254,995	100.00	$25,499,500	4.50	102.75	$26,200,736	4.38
Total - 1935					$25,499,500	4.50		$26,200,736	4.38
Central Illinois Light Co.	April 1936	Cumulative Preferred, 4½%, $100 par	117,037	98.79	$11,566,063	4.56	102.00	$11,937,774	4.41
Dayton Power & Light Co., The	June 1936	Cumulative Preferred, 4½%, $100 par	100,000	99.41	9,941,000	4.52	102.50	10,250,000	4.39
Public Service Co. of New Hampshire	August 1936	Cumulative Preferred, $5.00, no par	4,866	94.19	467,783	5.31	97.25	472,635	5.14
Rochester Gas & Electric Corp.	September 1936	Cumulative Preferred, B, 5%, $100 par	40,000	98.30	3,932,000	5.09	102.00	4,080,000	4.90
Cumberland County Power & Light Co.	October 1936	Cumulative Preferred, 5%, $100 par	10,000	99.38	993,800	5.53	103.00	1,030,000	5.34
Southern Indiana Gas & Electric Co.	October 1936	Cumulative Preferred, 4.8%, $100 par	85,895	99.38	8,536,740	4.83	102.75	8,826,711	4.67
Central Hudson Gas & Electric Corp.	November 1936	Cumulative Preferred, 4½%, $100 par	3,904	103.52	404,116	4.35	107.50	419,680	4.19
Missouri Power & Light Co.	December 1936	Cumulative Preferred, $6.00, no par	15,000	98.39	1,475,850	6.10	101.50	1,522,500	5.91
Public Service Co. of New Hampshire	December 1936	Cumulative Preferred, $5.00, no par	11,500	96.75	1,112,625	5.17	100.00	1,150,000	5.00
Total - 1936					$38,574,777	4.77		$39,439,550	4.60
Consumers Power Co.	January 1937	Cumulative Preferred, $4.50, no par	347,788	97.23	$33,811,427	4.63	100.50	$34,952,694	4.48
Northern States Power Co.	February 1937	Cumulative Preferred, $5.00, no par	275,000	99.94	27,483,500	5.00	103.00	28,325,000	4.85
Ohio Public Service Co.	August 1937	Cumulative First Preferred, 6%, $100 par	15,000	97.87	1,468,050	6.13	99.50	1,492,500	6.03
Total - 1937					$62,751,477	4.78		$64,770,194	4.63
Cumberland County Power & Light Co.	February 1938	Cumulative Preferred, 5%, $100 par	10,000	92.39	$ 923,900	5.95	97.00	$ 970,000	5.67
New York & Queens Electric Lt. & Pr. Co.	August 1938	Non-Cumulative Preferred, 5%, $100 par	8,172	97.49	891,182	5.13	100.00	917,200	5.00
Union Electric Co. of Missouri	November 1938	Cumulative Preferred, $5.00, no par	130,000	102.03	13,263,900	4.90	106.00	13,780,000	4.72
Public Service Co. of New Hampshire	December 1938	Cumulative Preferred, $5.00, no par	8,133	85.84	746,986	5.82	91.04	750,667	5.49
Pennsylvania Power Co.	December 1938	Cumulative Preferred, $5.00, no par	40,750	92.21	4,081,000	5.14	101.00	4,076,000	4.95
Total - 1938					$19,479,368	5.04		$20,773,867	4.82
Consolidated Gas El.Lt.& Pr.Co.of Balto.	April 1939	Cumulative Preferred, B, 4½%, $100 par	1,706 (A)	110.94	$ 189,300	4.07	112.50	$ 191,813	4.00
New York State Elec. & Gas Corp.	June 1939	Cumulative Preferred, 5%, $100 par	60,000	95.42	5,725,200	5.26	100.00	6,000,000	5.00
West Penn Power Co.	July 1939	Cumulative Preferred, 4½%, $100 par	26,279 (B)	100.49	2,594,451	4.23	110.00	2,890,690	4.09
Wisconsin Gas & Electric Co.	July 1939	Cumulative Preferred, 4½%, $100 par	4,186 (C)	99.93	418,361	4.66	100.00	418,600	4.50
San Antonio Public Service Co.	July 1939	Cumulative Preferred, $6, $100 par	2,740 (D)	100.61	275,671	5.96	104.00	285,760	5.77
Central Ohio Light & Power Co.	August 1939	Cumulative Preferred, $5, no par	1,700	84.19	143,218	7.13	90.00	153,000	6.67
Wisconsin Michigan Power Co.	December 1939	Cumulative Preferred, 4½%, $100 par	11,613 (E)	96.11	1,116,410	4.68	100.00	1,161,300	4.50
Total - 1939					$10,587,213	5.01		$11,134,763	4.73
Total - 1935, 1936, 1937, 1938 and 1939					$156,178,328	4.79		$162,301,010	4.64

(A) Consolidated Gas Electric Light & Power Company of Baltimore - Total issue was 221,061 shares, of which 221,345 shares were exchanged with company's stockholders.
(B) West Penn Power Company - Total issue was 247,077 shares, of which 220,798 shares were exchanged with company's stockholders.
(C) Wisconsin Gas & Electric Company - Total issue was 11,425 shares, of which 7,239 shares were exchanged with company's stockholders.
(D) San Antonio Public Service Company - Total issue was 40,000 shares, of which 37,300 shares were exchanged with company's stockholders.
(E) Wisconsin Michigan Power Company - Total issue was 40,000 shares, of which 28,387 shares were exchanged with company's stockholders.
Note: The above covers all cash Preferred Stock Issues of Electric Operating Utilities, sold in years 1935 to 1939, inclusive. The cost of money is the rate, after deduction of all expenses in connection with the sale of stock, and this cost can obtained from "Security Issues of Electric and Gas Utilities, 1935-1939-1937-1938-1939", issued by the Securities and Exchange Commission. The yield to purchasers is the yield based on the offering price of stocks.

ELECTRIC OPERATING UTILITY PREFERRED STOCKS SOLD IN YEAR 1940

YIELD TO PURCHASERS

Company	Month of Offering	Issue	Number of Shares	Price to Public Per Share	Price to Public Total	Yield %
Marion Reserve Power Co.	February	Cumulative Preferred, $5.00, no par	7,500	$ 98.00	$ 735,000	5.10
Southwestern Gas & Electric Co.	February	Cumulative Preferred, 5%, par $100	75,000	103.00	7,725,000	4.85
Central Electric & Telephone Co.	March	Cumulative Preferred, 6%, par $50	4,000	45.75	183,000	6.56
Indianapolis Power & Light Co.	April	Cumulative Preferred, 6%, par $100	2,500	100.00(A)	250,000	6.00*
Kansas Power & Light Co.	April	Cumulative Preferred, 4 1/2%, par $100	42,789(B)	103.00	4,407,267	4.37
Wisconsin Electric Power Co.	April	Cumulative Preferred, 4 3/4%, par $100	36,000(C)	100.00	3,600,000	4.75
Consolidated Gas, Electric Light & Power Co. of Baltimore	August	Preferred, Series C, 4%, par $100	68,928	104.00	7,168,512	3.85
Narragansett Electric Co.	August	Cumulative Preferred, 4 1/2%, par $50	180,000	53.25	9,585,000	4.23
Total					$33,653,779	4.41

* Offered privately.

(A) Assumed price of par.

(B) Kansas Power & Light Co. - Total issue was 139,169 shares, 4½% Preferred Stock. Of the total number of shares, 96,380 shares were offered in exchange for outstanding 6% and 7% preferred stocks. Portion of 96,380 shares not taken by former stockholders, plus 42,789 shares were offered to the public.

(C) Wisconsin Electric Power Co. - Total issue was 262,098 shares 4 3/4% Preferred Stock. Of the total, 226,098 shares were offered as part consideration for exchange of outstanding 6% preferred stock. Balance of 36,000 shares were offered to the public.

SCHEDULE NO. 11-A

YIELDS - PREFERRED STOCK ISSUES 1940

EXHIBIT 225

4

ELECTRIC OPERATING UTILITY COMMON STOCKS SOLD IN YEARS 1935 TO 1940, INCLUSIVE

EARNINGS-PRICE RATIOS

Company	Offering Date	Number of Common Shares Offered	Price to Public: For Share	Price to Public: Total	Earnings-Price Ratios: Average Offering Price (a)	Earnings-Price Ratios: Average Earnings Per Share (b)	Earnings-Price Ratios: Ratio (a)÷(b)=(c)	Per Cent of Gross Income Available for Common	
Boston Edison Co.	December 1935	77,549 Purchased by Stockholders	$150.00	$11,629,350	$150.53	$9.70(1935)	6.43%	46.89%	(1935)
		5,780 Sold to Public	144.00	790,160	150.53	9.43(1935)	6.27	41.66	(1935)
		82,329 Total	$150.53	$12,419,510					
Tampa Electric Co.	November 1937	30,712 Purchased by Stockholders	$ 20.00	$ 614,240	$ 20.00	$2.36(1936)	11.70	99.02	(1936)
					20.00	2.33(1937)	11.65	92.31	(1937)
Commonwealth Edison Co.	March 1940	**200,000 Purchased by Public	32.375	6,475,000	32.375	2.43(1939)	7.51	44.69	(1939)
Indianapolis Power & Light Co.	April 1940	*714,835 Purchased by Public	24.00	17,156,040	24.00	2.05(1939)	8.54	33.95	(1939)
West Penn Power Co.	April 1940	160,000 Purchased by Public	27.00	4,320,000	27.00	1.62(1939)	6.00	52.85	(1939)

* Of 714,835 shares offered, 68,855 shares represented new financing, and balance - 645,980 shares were formerly held by Clarence True Adams, as Trustee of Utilities Power & Light Corporation.

**This offering did not represent new financing by the company, shares offered to public having been acquired by an underwriting syndicate headed by Dillon, Read & Co., through conversion of a block of convertible debentures, each $100 of debentures being convertible into four common shares. The Commonwealth Edison Company, in a report to the Securities and Exchange Commission for the month of March 1940 (Form 8-K) made the following statement: "The Company has been informed that on or about March 6, 1940, Continental Illinois National Bank and Trust Company of Chicago sold its entire holdings of Convertible Debentures (3½% Series, due July 1, 1958), $5,003,800 principal amount, to a group of purchasers and that on March 7, 1940, all such Debentures were converted into shares of the Company by such purchasers." Following this statement appeared a list of 33 purchasers, together with the number of shares acquired by each as a result of the conversion, there being an aggregate of 200,152 shares so acquired. Among the larger acquisitions were those of Dillon, Read & Co. (22,000 shares); Blyth & Co., Inc., Kuhn, Loeb & Co., and Halsey Securities Corp., (20,000 shares each); and Kidder, Peabody & Co. (10,000 shares).

Source of Data: Moody's Public Utilities, 1939, and supplements.

EXHIBIT 225
23003
PRESENTED NO. 17
IN THE MATTER OF
ELECTRIC BOND & SHARE
SEC DOCKET NO. 1-55

NATURAL GAS INDUSTRY IN THE UNITED STATES

NATIONAL REVENUES FROM SALES TO CONSUMERS, GAS SALES TO CONSUMERS (M.C.F.), AND NUMBER OF GAS CUSTOMERS

Years 1929 to 1939, Inclusive

Year	Total	Domestic(1)	Commercial	Industrial and Electric Generation	Total	Domestic(1)	Commercial	Industrial and Electric Generation
	Revenues From Sales to Consumers				Average Annual Revenue Per M.C.F. of Gas Sales (2)			
1929	$ 576,250,000	$ 325,494,000	$ 52,579,000	$ 120,207,000	$ 0.580	$ 0.667	$ 0.555	$ 0.201
1930	585,857,000	337,185,000	55,994,000	114,578,000	0.590	0.692	0.551	0.197
1931	566,266,000	337,739,000	57,899,000	90,608,000	0.498	0.698	0.551	0.152
1932	542,651,000	328,065,000	58,995,000	75,595,000	0.411	0.711	0.506	0.173
1933	589,889,000	213,496,000	57,165,000	79,228,000	0.553	0.711	0.504	0.162
1934	547,067,000	213,619,000	58,376,000	95,072,000	0.536	0.704	0.485	0.160
1935	576,388,000	225,145,000	62,311,000	108,929,000	0.557	0.705	0.480	0.168
1936	612,144,000	237,280,000	66,169,000	128,771,000	0.539	0.698	0.480	0.165
1937	643,168,000	248,175,000	68,842,000	126,591,000	0.557	0.690	0.473	0.172
1938	618,756,000	242,178,000	67,147,000	126,431,000	0.548	0.688	0.468	0.167
1939	648,859,000	256,808,000	69,369,000	142,682,000	0.538	0.686	0.461	0.169
	Gas Sales To Consumers (M.C.F.)				Average Annual Gas Sales (M.C.F.) Per Customer (2)			
1929	991,096,000	535,418,000	98,641,000	356,977,000	168.1	60.5	175.6	27,138.3
1930	990,066,000	547,979,000	81,702,000	360,385,000	159.2	59.6	170.9	26,581.1
1931	908,870,000	540,591,000	68,783,000	298,996,000	146.8	59.0	149.2	18,477.6
1932	894,010,000	520,641,000	77,100,000	296,269,000	146.1	56.5	179.5	16,158.1
1933	882,988,000	500,284,000	73,788,000	288,321,000	139.4	53.0	170.4	17,460.9
1934	976,141,000	505,521,000	79,153,000	393,667,000	152.7	51.3	177.1	17,986.9
1935	1,053,806,000	520,733,000	88,115,000	444,958,000	159.5	52.5	188.3	19,564.2
1936	1,215,930,000	599,895,000	96,759,000	779,278,000	178.9	54.0	196.3	23,061.6
1937	1,314,907,000	599,890,000	105,220,000	852,797,000	186.1	54.2	201.4	21,894.9
1938	1,230,858,000	552,234,000	108,743,000	787,871,000	182.8	52.0	193.3	18,044.6
1939	1,328,243,000	572,971,000	109,314,000	845,958,000	178.2	54.3	202.1	19,673.4
	Number of Customers at End of Year				Average Annual Revenue Per Customer (2)			
1929	5,696,000	5,340,000	334,000	22,000	65.61	60.94	97.54	5,465.95
1930	6,285,000	5,860,000	401,000	22,000	68.00	60.67	94.17	5,199.00
1931	6,283,000	5,777,000	439,000	27,000	58.85	61.15	90.45	3,355.85
1932	6,188,000	5,671,000	490,000	27,000	55.92	60.82	90.69	2,799.74
1933	6,177,000	5,716,000	433,000	28,000	53.13	57.35	85.85	2,889.57
1934	6,391,000	5,911,000	447,000	33,000	54.31	56.14	85.85	2,880.96
1935	6,605,000	6,108,000	468,000	33,000	56.99	56.93	90.41	3,291.78
1936	6,817,000	6,292,000	488,000	37,000	60.56	57.70	95.21	3,480.89
1937	7,066,000	6,521,000	505,000	40,000	62.75	58.06	96.32	3,664.78
1938	7,216,000	6,680,000	524,000	44,000	57.72	56.42	89.08	2,880.26
1939	7,484,000	6,870,000	541,000	48,000	60.36	57.24	93.09	3,318.42

Source: "Annual Statistics of the Natural Gas Industry in 1939", Statistical Bulletin No. 41, October 1940, Issued by American Gas Association.

(1) Includes natural gas sold for house heating.
(2) Computed averages.

Note: These figures do not include natural gas used in field operations and in the manufacture of carbon black, or gas used by distributing companies in the conduct of their own operations.
Companies selling mixed manufactured and natural gas are not included in these data.

EXHIBIT 225A

NATURAL GAS INDUSTRY IN THE UNITED STATES*

COMPARATIVE ESTIMATED INCOME STATEMENT FOR THE YEAR 1931 - 1939

(Thousands of Dollars)

	1939	1938	1937	1936	1935	1934	1933	1932	1931	Percent Change 1939-38
Revenue from Gas Sales to Consumers	$448,859	415,756	443,408	412,444	376,388	347,067	329,889	342,681	366,246	+ 8.0
Miscellaneous Operating Revenue	6,643	6,735	5,631	4,289	3,726	5,846	2,705	2,956	4,065	- 1.4
Total Operating Revenue	455,502	422,491	449,039	416,733	380,114	349,913	332,594	344,707	370,311	+ 7.8
Operating Expenses**	233,363	215,808	225,417	205,033	195,769	191,753	185,256	182,350	199,968	+ 8.1
Maintenance	14,576	17,238	16,614	17,502	15,205	13,297	12,971	13,788	15,553	-15.4
Retirement, Depl., Depre. Exp.	55,298	51,882	53,885	47,090	43,712	42,339	39,911	41,368	40,734	+ 6.6
Taxes Accrued	44,594	39,968	41,312	37,506	31,930	31,142	29,268	30,679	29,995	+ 11.6
Total Revenue Deductions	347,821	324,896	337,228	307,132	286,606	278,531	267,406	268,182	286,250	+ 7.1
Utility Operating Income	107,681	97,595	111,811	109,601	93,508	71,382	65,188	76,525	84,061	+ 10.3
Non-Operating Income	4,236	4,141	5,388	5,001	5,702	5,599	5,322	5,860	7,776	+ 2.3
Gross Corporate Income	111,917	101,736	117,199	114,602	99,210	76,981	70,510	82,385	91,837	+ 10.0
Interest & Other Deductions	39,765	39,461	42,210	45,424	42,953	45,489	43,570	38,262	40,734	+ 0.8
Net Income Available for Dividends and Surplus	$ 72,152	62,275	74,989	69,178	56,257	31,492	26,940	44,123	51,103	+ 15.9
Utility Plant (000 omitted)	$2,414,490	2,441,840	2,414,484	2,369,490	2,345,384	2,330,984				

* Companies formerly distributing manufactured gas but which were distributing natural gas at the beginning of 1939 have been included in the above tabulation for all nine years. The data shown above for 1931 to 1938 are therefore not comparable with data on the natural gas industry previously issued for those years.

** Includes leased property rents.

Source of Data: Annual Statistics of the Natural Gas Industry in 1939, Bulletin No. 41, October, 1940, issued by the American Gas Association.

SCHEDULE NO. 2
EXHIBIT 225A

(All Gas Quantities In Thousand Cubic Feet)

Year	Total Natural Gas Production	Total Natural Gas Consumption (1)	Natural Gas Transported in Interstate Commerce (2)	Interstate Transportation, Per Cent of Total Consumption (1)	Number of States in which Natural Gas Was	
					Produced (3)	Consumed
(a)	(b)	(c)	(d)	(e) = (d) ÷ (c)		
1926	1,313,019,000	704,344,000	209,361,000	29.7	22	23
1927	1,445,428,000	751,702,000	194,217,000	25.8	24	25
1928	1,568,139,000	819,144,000	241,210,000	29.4	24	25
1929	1,917,693,000	951,261,000	324,779,000	34.1	26	27
1930	1,943,421,000	951,854,000	378,803,000	39.8	26	30
1931	1,686,436,000	917,488,000	330,307,000	36.0	2	35
1932	1,535,990,000	856,720,000	329,781,000	38.5	24	35
1933	1,555,474,000	872,159,000	344,652,000	39.5	24	35
1934	1,770,721,000	980,513,000	408,382,000	41.6	24	35
1935	1,916,595,000	1,087,898,000	462,224,000	42.5	24	35
1936	2,167,802,000	1,258,629,000	566,907,400	45.0	24	35
1937	2,407,620,000	1,410,636,000	687,428,000	48.7	24	35
1938	2,295,562,000	1,309,944,000	636,626,000	48.6	24	35
1939	2,435,000,000P	1,436,154,000P	----------	----------	Not Available	----------

P. Preliminary.

Source of Data:

Years 1926 to 1934, inclusive-Data compiled by U.S. Bureau of Mines, as represented at page 160 of record of hearing before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 74th Congress, 2nd Session, on H. R. 11662 "To Regulate the Transportation and Sale of Natural Gas in Interstate Commerce and for Other Purposes", April 1936.

Years 1935-1936 - U.S. Bureau of Mines, "Minerals Year Book", 1937 and 1938 editions.

Year 1937 - U.S. Bureau of Mines, "Mineral Market Reports, No. M.M.S. 682", issued December 13, 1938.

Year 1938 - U.S. Bureau of Mines, "Mineral Market Reports, No. M.M.S. 772", issued December 19, 1939.

Year 1939 - U.S. Bureau of Mines, Preprint of Chapter on Natural Gas - "Minerals Year Book", 1940 editions.

(1) Excluding gas used for field operations and manufacture of carbon black. Natural gas used for latter purpose is used in the State in which it is produced.

(2) Excluding amounts transported to Canada and Mexico.

(3) Five states produce over 80 percent of total natural gas. These states, ranked according to volume of gas produced in 1939, are Texas, California, Louisiana, Oklahoma and West Virginia.

SCHEDULE NO. 3
EXHIBIT 225A

23001

SCHEDULE NO. 4

EXHIBIT 225A

NATURAL GAS TRANSPORTED INTO STATES OF COLORADO AND WYOMING

YEARS 1929 TO 1938, INCLUSIVE

(M.C.F.)

TRANSPORTED INTO STATE OF COLORADO

		From State of			
Year	Total	Texas	Kansas	New Mexico	Wyoming
1929	12,654,000	12,563,000	-	91,000	-
1930	15,056,000	14,914,000	-	142,000	-
1931	16,051,000	15,779,000	165,000	106,000	1,000
1932	15,644,000	15,227,000	294,000	102,000	21,000
1933	15,095,000	14,638,000	292,000	112,000	53,000
1934	15,731,000	15,331,000	286,000	111,000	3,000
1935	16,908,000	16,433,000	338,000	137,000	-
1936	19,253,000	18,694,000	411,000	148,000	-
1937	20,511,000	19,928,000	421,000	161,000	1,000
1938	18,855,000	18,210,000	457,000	164,000	24,000
1939	- - - - - - - - - - - - - - Not Available - - - - - - - - - - - - - -				

TRANSPORTED INTO STATE OF WYOMING

		From State of		
Year	Total	Texas	Colorado	Utah
1929	851,000	-	851,000	-
1930	439,000	-	439,000	-
1931	469,000	364,000	105,000	-
1932	611,000	396,000	215,000	-
1933	623,000	352,000	271,000	-
1934	459,000	316,000	143,000	-
1935	573,000	399,000	174,000	-
1936	669,000	506,000	163,000	-
1937	767,000	523,000	153,000	91,000
1938	665,000	481,000	91,000	93,000
1939	- - - - - - - - - - - - - - Not Available - - - - - - -			

Source: U.S. Bureau of Mines Publications
Years 1929 to 1931, inclusive, "Minerals Resources of the United States".
Years 1932 to 1937, inclusive, "Minerals Year Book".
Year 1938 Preprint of Chapter on Natural Gas - "Minerals Year Book" - 1940 edition.

SECURITIES OF NATURAL GAS COMPANIES

SUMMARY ACCORDING TO CLASSES OF HOLDERS

Company and Issues	Total Securities Outstanding	Held by Public	Held by Institutions	Held by Affiliates
Arkansas Louisiana Gas Co.				
Bonds and Debentures:				
First Mtg. 2 3/4%, A, 1940-44	$ 3,300,000	$ -	$ 3,300,000	$ -
First Mtg. 3 1/2%, B, 1945-54	9,700,000	-	9,700,000	-
Debentures, 4%, 1955	6,500,000	-	-	6,500,000
	$19,500,000	$ -	$13,000,000	$ 6,500,000
Common Stock 298,988 Shs. Par $50	14,949,400	-	-	14,949,400
Total	$34,449,400	$ -	$13,000,000	$21,449,400
Canadian River Gas Co.				
First Mtg. 6%	$ 5,057,000	$ -	$ -	$ 5,057,000
Notes, 1940-48	1,348,254	-	-	1,348,254
Common Stock	1	-	-	1
Total	$ 6,405,255	$ -	$ -	$ 6,405,255
Chicago District Pipeline Co.				
Notes	$ 4,869,897	$ -	$ -	$ 4,869,897
Common Stock, 7,500 Shs. No Par	659,000	-	-	659,000
Total	$ 5,528,897	$ -	$ -	$ 5,528,897
Cities Service Gas Co.				
Bonds, Debentures and Notes:				
First Mtg. 3 3/4%, 1947-54	$20,000,000	$ -	$20,000,000	$ -
Debentures, 5%, 1956	8,000,000	-	-	8,000,000
Notes Payable	13,000,000	-	13,000,000	-
	$41,000,000	$ -	$33,000,000	$ 8,000,000
Common Stock 350,000 Shs. No Par	30,000,000	-	-	$30,000,000
Total	$71,000,000	$ -	$33,000,000	$38,000,000

Notes Payable of $13,000,000 are secured by $15,000,000 First Mtg. 3¼%, 1940-46.

Colorado Interstate Gas Co.				
First & Coll. Trust 3½%, 1948	$ 8,865,000	$ -	$ 8,865,000	$ -
Preferred Stock, 6%, Par $100	2,000,000	-	-	2,000,000
Common Stock, 1,250,000 Shs. No Par	2,352,941	-	-	2,352,941
Total	$13,217,941	$ -	$ 8,865,000	$ 4,352,941

SECURITIES OF NATURAL GAS COMPANIES

SUMMARY ACCORDING TO CLASSES OF HOLDERS

Company and Issues	Total Securities Outstanding	Held by Public	Held by Institutions	Held by Affiliates
El Paso Natural Gas Co.				
Bonds and Notes:				
First Mtg. 3½%, 1953	$ 6,000,000	$ -	$ 6,000,000	$ -
First Mtg. 3%, 1953	3,000,000	-	3,000,000	-
	$ 9,000,000	$ -	$ 9,000,000	$ -
Preferred Stock, 7%, Par $100	1,479,700	1,479,700	-	-
Common Stock, 601,594 Shs. Par $3	1,804,782	1,804,782	-	-
Total	$12,284,482	$3,284,482	$ 9,000,000	$ -
$3,000,000 First Mtg. 3%, 1953, were offered in 1940. Company also has recorded $3,407,212 Premium on Common Stock.				
Hope Natural Gas Co.				
Common Stock, 279,693 Shs. Par $100	$27,969,300	$ -	$ -	$27,969,300
Houston Gulf Gas Co.				
Bonds, Debentures and Notes:				
First & Collateral, 6%, 1943	$ 4,238,000	$3,777,000	$ 461,000	$ -
Debentures, 6½%, 1943	1,850,000	1,453,000	397,000	-
Notes, 7%, 1945	1,500,000	-	-	1,500,000
	$ 7,588,000	$5,230,000	$ 858,000	$ 1,500,000
Preferred Stocks:				
7%, Series A, Par $100	$ 806,300	$ 11,100	$ -	$ 795,200
7%, Series B, Par $100	1,500,000	1,000	-	1,499,000
	$ 2,306,300	$ 12,100	$ -	$ 2,294,200
Common Stock, 517,008 Shs. No Par	$ 5,170,080	$ 21,160	$ -	$ 5,148,920
Total	$15,064,380	$5,263,160	$ 858,000	$ 8,943,120
Interstate Natural Gas Co.				
Common Stock, 952,953 No Par	$ 6,529,530	$1,893,564	$ -	$ 4,635,966
Lone Star Gas Co.				
Notes	$16,600,000	$ -	$ -	$16,600,000
Common Stock, 540,000 Shs. No Par	28,113,220	-	-	28,113,220
Total	$44,713,220	$ -	$ -	$44,713,220
Kentucky West Virginia Gas Co.				
Preferred Stocks:				
5% Cum. First, Par $100	$ 2,937,500	$ -	$ -	$ 2,937,500
7% Cum. Second, Par $100	5,407,500	-	-	5,407,500
	$ 8,345,000	$ -	$ -	$ 8,345,000
Common Stock 100,000 Shs. No Par	1,304,715	-	-	1,304,715
Total	$ 9,649,715	$ -	$ -	$ 9,649,715

EXHIBIT 225A

SECURITIES OF NATURAL GAS COMPANIES

SUMMARY ACCORDING TO CLASSES OF HOLDERS

Company and Issues	Total Securities Outstanding	Held by Public	Held by Institutions	Held by Affiliates
Memphis Natural Gas Co.				
Notes	$ 1,610,000	$ -	$ 1,610,000	$ -
Common Stock, 918,680 Shs. Par $5	4,593,400	2,381,678	-	2,211,722
Total	$ 6,203,400	$ 2,381,678	$ 1,610,000	$ 2,211,722
Mississippi River Fuel Corp.				
Bonds and Notes:				
First Mtg. 4%, 1952	$ 8,332,000	$ -	$ 8,332,000	$ -
Notes, 6%, 1940	2,400,000	-	-	2,400,000
	$10,732,000	$ -	$ 8,332,000	$ 2,400,000
Common Stock, 655,220 Shs.Par $10	6,552,200	-	-	6,552,200
Total	$17,284,200	$ -	$ 8,332,000	$ 8,952,200
Michigan Gas Transmission Corp.				
Notes	$ 6,470,500	$ -	$ -	$ 6,470,500
Common Stock, 44,800 Shs. Par $50	2,240,000	-	-	2,240,000
Total	$ 8,710,500	$ -	$ -	$ 8,710,500
Natural Gas Pipeline Co. of America				
First Mtg. 6%, 1946	$42,300,000	$ -	$ -	$42,300,000
Common Stock, 1,500,000 Shs.No Par	3,000,000	-		3,000,000
Total	$45,300,000	$ -	$ -	$45,300,000
New York State Natural Gas Corp.				
Income Notes, 6%, 1942	$ 4,500,000	$ -	$ -	$ 4,500,000
Common Stock, 20,900 Shs. Par $100	2,090,000	-	-	2,090,000
Total	$ 6,590,000	$ -	$ -	$ 6,590,000
Northern Natural Gas Co.				
Bonds and Notes:				
First Mtg. 3½%, 1954	$16,000,000	$ -	$16,000,000	$ -
Notes, 2 1/8%, 1940-46	6,000,000	-	6,000,000	-
	$22,000,000	$ -	$22,000,000	$ -
Common Stock, 203,000 Shs.No Par	19,273,460	-	-	19,273,460
Total	$41,273,460	$ -	$22,000,000	$19,273,460
Panhandle Eastern Pipe Line Co.				
First Mtg. 4%, A, 1952	$23,000,000	$ 4,918,000	$18,082,000	$ -
Preferred Stock:				
Class A, $6, Par $100	$10,000,000	$ -	$ -	$10,000,000
Class B, $6, Par $100	1,000,000	-	-	1,000,000
	$11,000,000	$ -	$ -	$11,000,000
Common Stock, 807,367 Shs.No Par	$20,184,175	$ 1,594,550	$ -	$18,589,625
Total	$54,184,175	$ 6,512,550	$18,082,000	$29,589,625

SECURITIES OF NATURAL GAS COMPANIES EXHIBIT 225A

SUMMARY ACCORDING TO CLASSES OF HOLDERS

Company and Issues	Total Securities Outstanding	Held by Public	Institutions	Affiliates
Pittsburgh & West Virginia Gas Co.				
Notes	$13,090,446	$ -	$ -	$13,090,446
Common Stock, 344,000 Shs. No Par	8,600,000	-	-	8,600,000
Total	$21,690,446	$ -	$ -	$21,690,446
Southern Natural Gas Co.				
Bonds and Notes:				
First Mtg. 4½%, 1951	$12,408,000	$ 6,447,000	$ 5,961,000	$ -
First Mtg. 4½%, 1952	572,000	-	572,000	-
Adj. Mtg., 1960	5,771,523	2,816,523	48,000	2,907,000
Notes, 4½%	800,000	-	800,000	-
	$19,551,523	$ 9,263,523	$ 7,381,000	$ 2,907,000
Common Stock, 691,970 Shs. Par $7.50	5,189,776	2,698,684	-	2,491,092
Total	$24,741,299	$11,962,207	$ 7,381,000	$ 5,398,092
Texoma Natural Gas Co.				
Gas & Pipeline Mtg. 6%, 1946	$18,750,000	$ -	$ -	$18,750,000
Common Stock, 10,000 Shs. No Par	500,000	-	-	500,000
Total	$19,250,000	$ -	$ -	$19,250,000
United Fuel Gas Co.				
Notes:				
4%, 1940-46	$ 4,500,000	$ -	$ 4,500,000	$ -
Affiliates	14,535,000	-	-	14,535,000
	$19,035,000	$ -	$ 4,500,000	$14,535,000
Common Stock, 300,000 Shs. Par $1.	300,000	$ -	$ -	$ 300,000
Total	$19,335,000	$ -	$ 4,500,000	$14,835,000
United Gas Pipeline Co.				
Bonds and Debentures:				
Northern Texas, 6%, 1940	$ 790,000	$ -	$ -	$ 790,000
Debentures, 6%, 1952	23,000,000	-	-	23,000,000
	$23,790,000	$ -	$ -	$23,790,000
Common Stock, 100,000 Shs. No Par	96,772,535	-	-	96,772,535
Total	$120,562,535	$ -	$ -	$120,562,535
United Natural Gas Co.				
Common Stock	$15,125,000	$ -	$ -	$15,125,000
Warfield Natural Gas Co.				
Notes	$ 9,790,000	$ -	$ -	$ 9,790,000
Common Stock 5,470 Shs. Par $100	547,000	-	-	547,000
Total	$10,337,000	$ -	$ -	$10,337,000
Grand Total	$637,399,135	$31,297,741	$126,628,000	$479,473,394

EXHIBIT 225A

SECURITIES OF NATURAL GAS COMPANIES

SUMMARY ACCORDING TO CLASSES OF HOLDERS

Company and Issues	Total Securities Outstanding	Held by Public	Held by Institutions	Held by Affiliates
Grand Total by Types of Securities				
Bonds, Debentures and Notes	$328,447,620	$19,411,523	$126,628,000	$182,408,097
Preferred Stock	25,131,000	1,491,800	-	23,639,200
Common Stock	303,820,515	10,394,418	-	293,426,097
Grand Total	$657,399,135	$31,297,741	$126,628,000	$499,473,394

The above information is as of December 31, 1939, with effect given to any information regarding changes since December 31, 1939.

BONDS, DEBENTURES AND NOTES OF NATURAL GAS COMPANIES

HOLDINGS BY PUBLIC

Company	Issue	Total Outstanding	Held by Public (a)	Ratings Moody's	Ratings Poor's	Average of High-Low Prices 1937	1938	1939	1940(c)	Approximate Yield to Maturity 1937	1938	1939	1940	Sept. 30, 1940 Market Price	% Yield	Current Call Price General	Sinking Fund
Arkansas Louisiana Gas Co.	First Mortgage, S.F. 4%, 1951	Retired in October 1939(d)		A	A	100.38	100.25	103.00	-	3.96%	3.98%	3.69%	-	-	-	-	-
El Paso Natural Gas Co.	First Mortgage, S.F. 4½%, 1951	Retired in January 1939(e)		Ba	B**	103.50	104.06	-	-	4.17	4.09	-	-	-	-	-	-
Houston Gulf Gas Co.	First & Coll. 6%, A, 1943	$ 4,238,000	$ 3,777,000	Ba	B**	101.25	101.00	103.25	102.75	5.75	5.77	5.09	5.00%	101.00	(b)	101	101
" " "	Debentures, 6½%, 1943	1,850,000	1,453,000	B	B*	99.63	99.75	101.75	101.88	6.58	6.56	6.00	5.82	101.00	(b)	101	101
Panhandle Eastern Pipe Line Co.	First Mtg., S.F., A, 4% 1952	23,000,000	4,918,000	A	A	99.31	101.63	102.38	104.13	4.06	3.85	3.77	3.57	103.63	3.63	102-1/2	100
Southern Natural Gas Co.	First Mtg., F.L.S.F. 4½%, 1951	12,408,000	6,447,000	Baa	B**	98.00	96.50	103.56	105.63	4.70	4.87	4.12	3.87	106.63	3.75	105	100-1/2
" " "	Adj. Mtg., 6%, 1960	5,771,523	2,816,523	B	B*	84.25	81.75	98.00	97.88	7.44	7.74	6.17	6.19	100.50	5.96	100	-
TOTAL		$47,267,523	$19,411,523														

Notes: (a) The difference between Total Outstanding and Held by Public is held by Institutions and Affiliates.
(b) Called for redemption on October 1, 1940, in conjunction with proposed refunding operations by United Gas Corporation.
(c) Nine months ended September 30, 1940.
(d) In September 1939, the company sold privately the following issues:
First Mtg. 2-3/4%, A, 1940-44 - $3,300,000 principal amount sold at par
First Mtg. 3-1/2%, B, 1945-54 - 9,700,000
(e) In December 1938, the company sold privately $4,000,000 of 3% Serial Notes; also $6,000,000 of First Mortgage 3½% Bonds, due 1953, at 99 to yield 3.59% to purchasers. In June and July 1940, the company sold privately $3,000,000 of First Mortgage 3% Bonds, due 1953, at 98½ to yield 3.13% to purchasers.

EXHIBIT 225A

BONDS, DEBENTURES AND NOTES OF NATURAL GAS COMPANIES

HOLDINGS BY INSTITUTIONS

Company and Issue	Total Outstanding	Holding Institution	Amount	% of Total Outstanding
Arkansas-Louisiana Gas Co.				
First Mtg. 2 1/4%, A, 1950-44	$ 3,300,000	(a)(Guaranty Trust Co. of New York	$2,800,000	
		(Central Hanover Bank & Trust Co.	500,000	
			$3,300,000	100.0
First Mtg. 3%, B, 1945-54	9,700,000	(a)(Equitable Life Assurance Society of U.S.	$4,850,000	
		(Metropolitan Life Insurance Co.	3,550,000	
		(Massachusetts Mutual Life Ins. Co.	400,000	
		(Sun Life Assurance Co. of Canada	350,000	
		(Teachers Ins. & Annuity Assoc. of America	300,000	
		(Provident Mutual Ins. Co. of Philadelphia	250,000	
			$9,700,000	100.0
Cities Service Gas Co.				
First Mtg. 3 3/4%, 1947-54	20,000,000	(b)(Equitable Life Assurance Society of U.S.	$10,000,000	
		(Metropolitan Life Insurance Co.	10,000,000	
			$20,000,000	100.0
Notes Payable (Secured by $15,000,000 First Mtg. 3%, 1940-46)	13,000,000	(c) Bank Loan	$13,000,000	100.0
Colorado Interstate Gas Co.				
First & Coll. Trust 3%, 1948	8,865,000	(b) Mutual Life Ins. Co. of N. Y.	$ 4,865,000	
		(c) Guaranty Trust Co. of N. Y.	4,000,000	
			$ 8,865,000	100.0

See Schedule No. 5, Page 5 for Notes.

EXHIBIT 225A

SCHEDULE NO. 5
PART 1

BONDS, DEBENTURES AND NOTES OF NATURAL GAS COMPANIES

HOLDINGS BY INSTITUTIONS

Company and Issue	Total Outstanding	Holding Institution	Amount	% of Total Outstanding
El Paso Natural Gas Co.				
First Mtg. 3 1/2%, 1951	$80,000,000	(b)(Equitable Life Assurance Society of U. S.	$2,250,000	
		(Harvard College	100,000	
		(Massachusetts Mutual Life Insurance Co.	275,000	
		(Metropolitan Life Insurance Co.	2,000,000	
		(Mutual Life Insurance Co. of N. Y.	475,000	
		(Sun Life Assurance Co. of Canada	900,000	
			$6,000,000	100.0
First Mtg. 3%, 1951	5,000,000	(d)(Equitable Life Assurance Society of U. S.		
		(Metropolitan Life Insurance Co.		
		(Sun Life Assurance Co. of Canada	$ 5,000,000	
		(Mutual Life Insurance Co. of N. Y.		
		(Massachusetts Mutual Life Insurance Co.		
			$ 5,000,000	100.0
Houston Gulf Gas Co.				
First & Collateral A. 5%, 1943	4,236,000	(b)(Princeton University	$200,000	
		(10 Other Institutions	251,000	
			$451,000	10.7
Debentures, 6%, 1943	1,350,000	(b)(Massachusetts Mutual Life Insurance Co.	$163,000	
		(6 Other Institutions	234,000	
			$397,000	29.4
Memphis Natural Gas Co.				
Notes	1,610,000	(c) Various Banks	$1,610,000	100.0
Mississippi River Fuel Corp.				
First Mtg. 4%, 1952	8,112,000	(b)(Equitable Life Assurance Society of U. S.		
		(Metropolitan Life Insurance Co.		
		(Mutual Life Insurance Co. of N. Y.	$8,112,000	
		(Prudential Insurance Co. of America		
			$8,112,000	100.0

See Schedule No. 1-B, Page 1 for Notes.

BONDS, DEBENTURES AND NOTES OF NATURAL GAS COMPANIES

HOLDINGS BY INSTITUTIONS

Company and Issue	Total Outstanding	Holding Institution	Amount	% of Total Outstanding
Northern Natural Gas Co.				
First Mtg. 3 1/4%, 1954	$16,000,000	(b)(Equitable Life Assurance Society of U. S.	$ 3,600,000	
		(Metropolitan Life Insurance Co.	5,400,000	
		(Prudential Insurance Co. of America	3,600,000	
		(Sun Life Assurance Co. of Canada	1,000,000	
		(Travelers Insurance Co.	2,400,000	
			$16,000,000	100.0
Notes, 2 1/8%, 1940-46	6,000,000	(c) Chase National Bank	$ 6,000,000	100.0
Panhandle Eastern Pipe Line Co.				
First Mtg. 3%, A, 1952	23,000,000	(b)(Equitable Life Assurance Society of U. S.	$ 4,891,000	
		(Harvard College	134,000	
		(Massachusetts Mutual Life Ins. Co.	880,000	
		(Metropolitan Life Insurance Co.	4,323,000	
		(Mutual Life Insurance Co. of N. Y.	1,500,000	
		(Princeton University	200,000	
		(Provident Mutual Life Ins. Co. of Phila.	241,000	
		(Prudential Insurance Co. of America	980,000	
		(Sun Life Assurance Co. of Canada	3,000,000	
		(Travelers Insurance Co.	730,000	
		(25 Other Institutions	1,141,000	
			$18,022,000	78.6

See Schedule No. 5-B, Page 5 for Notes.

EXHIBIT 225A

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BONDS, DEBENTURES AND NOTES OF NATURAL GAS COMPANIES

HOLDINGS BY INSTITUTIONS

Company and Issue	Total Outstanding	Holding Institution	Amount	% of Total Outstanding
Southern Natural Gas Co.				
First Mtg. 4 1/2s, 1951	$12,408,000	(b)(Harvard College	$ 100,000	
		(Insurance Co. of North America	238,000	
		(Massachusetts Mutual Life Insurance Co.	321,000	
		(Metropolitan Life Insurance Co.	2,901,000	
		(Modern Woodmen of America	241,000	
		(Princeton University	100,000	
		(Provident Mutual Life Insurance Co.	289,000	
		(Sun Life Assurance Co. of Canada	385,000	
		(Travelers Insurance Co.	275,000	
		(Wilmington Savings Fund Society	136,000	
		(29 Other Institutions	970,000	
			$ 5,961,000	48.0
First Mtg. 4 1/2s, 1952	572,000	(b)(Metropolitan Life Insurance Co.	$ 572,000	100.0
Adjustment Mtg. 1960	5,771,523	(b)(Central Life Ins. Co. of Illinois	$ 23,000	
		(Order of Scottish Clans	25,000	
			$ 48,000	8.3
Notes, 4 1/2s	800,000	(c, First National Bank, Birmingham, Ala.	$ 800,000	100.0
United Fuel Gas Co.				
Notes, 5s, 1940-46	4,500,000	(b)(Metropolitan Life Insurance Co.	$ 3,750,000	
		(Mutual Life Insurance Co. of N. Y.	875,000	
			$ 4,500,000	100.0
GRAND TOTAL			$126,628,000	

See Schedu No. 5-B, Page 5 for Notes.

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SCHEDULE NO. 5-B
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BONDS, DEBENTURES AND NOTES OF NATURAL GAS COMPANIES

HOLDINGS BY INSTITUTIONS

Source of Data:

(a) S. E. C. Holding Company Release No. 1731, dated September 26, 1939.

(b) Poor's Institutional Holdings of Securities, 1940.

(c) Moody's Public Utilities, 1940.

(d) Moody's Public Utilities Supplements, September 11, 1940.

(e) Working papers of F.P.C. Accountants, Docket Nos. G-118, G-121, and G-124.

SCHEDULE NO. 5-B
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EXHIBIT 225A

BONDS, DEBENTURES AND NOTES OF NATURAL GAS COMPANIES

HOLDINGS BY AFFILIATES

Company and Issue	Total Outstanding	Holding Affiliate	Amount	% of Total Outstanding
Arkansas-Louisiana Gas Co.				
Debentures, 4½%, 1955	$ 6,500,000	(a) Arkansas Natural Gas Corp.	$ 6,500,000	100.0
Canadian River Gas Co.				
First Mtg. 6%	5,057,000	(a) Colorado Interstate Gas Co.	$ 5,057,000	100.0
Notes, 1940-48	1,348,254	(d) Colorado Interstate Gas Co.	$ 1,348,254	100.0
Chicago District Pipeline Co.				
Notes	4,869,897	(a) Natural Gas Investment Co.	$ 4,869,897	100.0
Cities Service Gas Co.				
Debentures, 5½%, 1956	8,000,000	(a) Cities Service Co. and subsidiaries	$ 8,000,000	100.0
Houston Gulf Gas Co.				
Notes, 7%, 1945	1,500,000	(a) United Gas Pipe Line Co.	$ 1,500,000	100.0
Lone Star Gas Co.				
Notes	16,600,000	(c) Lone Star Gas Corp.	$16,600,000	100.0
Michigan Gas Transmission Corp.				
Notes	6,470,500	(c) Columbia Gas & Electric Corp.	$ 6,470,500	100.0
Mississippi River Fuel Corp.				
Notes, 6%, 1940	2,400,000	(b) (United Carbon Co. (United Gas Corp. (Standard Oil Co. of N. J. (Columbian Carbon Co.	$ 2,400,000	
			$ 2,400,000	100.0

Natural Gas Pipeline Co. of America				
First Mtg. 6%, 1946	$42,500,000	(a) (Cities Service Co. (Natural Gas Investment Co. (Standard Oil Co. of N. J. (Southwestern Development Co. (Texas Co. (Columbian Carbon Co.	$42,500,000	
			$42,500,000	100.0
New York State Natural Gas Corp.				
Income Notes, 6%, 1962	4,500,000	(a) Lycoming United Gas Corp.	$ 4,500,000	100.0
Pittsburgh & West Virginia Gas Co.				
Notes	13,090,446	(a) Affiliated Companies	$13,090,446	100.0
Southern Natural Gas Co.				
Adjustment Mtg. 6%, 1960	5,771,523	(a) Federal Water Service Corp.	$ 2,907,000	50.4
Texoma Natural Gas Co.				
Gas & Pipeline Mtg. 6%, 1946	18,750,000	(a) Natural Gas Pipeline Co. of America	$18,750,000	100.0
United Fuel Gas Co.				
Notes	14,535,000	(c) Columbia Gas & Electric Corp.	$14,535,000	100.0
United Gas Pipe Line Co.				
Northern Texas, 6% Bonds, 1963	790,000	(a) Electric Bond & Share Co.	$ 790,000	100.0
Debenture, 6%, 1956	25,000,000	(a) United Gas Corp.	$25,000,000	100.0
Warfield Natural Gas Co.				
Notes	9,790,000	(c) Columbia Gas & Electric Corp.	$ 9,790,000	100.0
Grand Total			$182,428,097	

Source of data: (a) Moody's Public Utilities, 1940
(b) Poor's Industrial Manual, 1940
(c) 1939 Annual Report to Federal Power Commission (Form 1-S)
(d) Working papers of FPC Accountants, Docket Nos. G-118, G-121, and G-122.
(e) Working papers of FPC Accountants, Docket Nos. G-114, and G-125

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EXHIBIT 225A

PREFERRED STOCKS OF NATURAL GAS COMPANIES

HOLDINGS BY PUBLIC

Company	Issue	Total Outstanding	Held by Public (a)	Poor's Rating	1937 High	1937 Low	1938 High	1938 Low	1939 High	1939 Low	1940 Latest	Current Yield %	Call Price
El Paso Natural Gas Co.	7% Cum. Pfd. - Par $100	$1,479,700	$1,479,700	B**	107 (b)	[illegible] (b)	109 (b)	102 (b)	111 (b)	108 (b)	110 Bid	6.36	110
Houston Gulf Gas Co.	7% Cum. Series A - Par $100	806,300 (c)	11,100	C*	-	-	-	-	-	-	-	-	107
" " "	7% Cum. Series B - Par $100	1,500,000 (c)	1,000	C*	-	-	-	-	-	-	-	-	107
		$3,786,000	$1,491,800	-	-	-	-	-	-	-	-	-	

Notes: (a) The difference between Total Outstanding and Held by Public is Held by Affiliates
(b) End of month bid quotations
(c) Dividends in arrears from September 1, 1931 to December 31, 1939 aggregate $58.33-1/8 per share

HOLDINGS BY AFFILIATES

Company and Issue	Total Outstanding	Holding Affiliate	Amount	% of Total Outstanding
Colorado Interstate Gas Co.				
Preferred Stock 6%, Par $100	$ 2,000,000	(a)(Standard Oil Co. of N. J.	$ 1,000,000	50.0
		(Consolidated Oil Corp.	1,000,000	50.0
			$ 2,000,000	100.0
Houston Gulf Gas Co.				
7% Cum. Preferred, A, Par $100	806,300	(a) United Gas Pipeline Co.	$ 795,200	98.6
7% Cum. Preferred, B, Par $100	1,500,000	(a) United Gas Pipeline Co.	$ 1,499,000	99.9
Kentucky-West Virginia Gas Co.				
5% Cum. First Preferred, Par $100	2,937,500	(a) Louisville Gas & Electric Co. (Ky)	$ 2,937,500	100.0
7% Cum. Second Preferred, Par $100	5,407,500	(a) Philadelphia Co. and subsidiaries	$ 5,407,500	100.0
Panhandle Eastern Pipe Line Co.				
Class A, $6, Par $100	10,000,000	(a) Columbia Oil & Gasoline Corp.	$10,000,000	100.0
Class B, $6, Par $100	1,000,000	(a) Columbia Oil & Gasoline Corp.	$ 1,000,000	100.0
GRAND TOTAL			$23,639,200	

Source of Data: (a) Moody's Public Utilities, 1940

EXHIBIT 225A

COMMON STOCKS OF NATURAL GAS COMPANIES

STANDING BY PUBLIC

Company	Total Outstanding Shares	Total Outstanding Amount	Total Held By Public (a) Shares	Total Held By Public (a) Amount	Par or Value	Moody's Ratings	Earnings Per Share 1937	1938	1939	1940(Latest) available	Average of High-Low Prices 1937	1938	1939	1940(b)	Average-Price Ratio 1937	1938	1939	1940	September 30, 1940 Earnings Per Share	Market Price	P/E Ratio
* Peoples Natural Gas Co.	361,599	$ 1,804,781(c)	361,599	$ 1,804,781	$1.00	B+	$1.00	$1.30	$1.75	$3.00	(12 mo. 6/31/40)	$21.75	$13.50	$25.50	$33.25	13.75%	10.38%	10.60%	11.37%	$3.00	$33.00	11.00%
Houston Gulf Gas Co.	547,008	5,170,080	2,110	23,100	* No Par		.14	.05	0.25	0.25	(Year 1939)								0.25		
Interstate Natural Gas Co.	952,353	9,589,530	278,356	1,893,560	No Par	B	2.50	2.13	2.11	2.11	(Year 1939)	29.25	21.25	23.75	23.25	9.90	10.00	8.88	9.08	2.11	20.00	8.79
Memphis Natural Gas Co.	918,681	9,593,400	475,338	2,381,578	5.00	B		0.50(d)	0.65	0.65	(Year 1939)	9.63	5.94	9.13	9.38	16.63	13.94	15.75	14.88	0.65	8.75	13.46
Panhandle Eastern Pipe Line Co.	831,357	20,184,175	63,766	1,594,550	No Par	B	3.57(e)	2.68(e)	3.82(e)	4.63(e)	(12 mo. 6/30/40)	(f)	(f)	39.75	58.00			9.61	13.03	4.63	57.00	11.97
Southern Natural Gas Co.	994,970	5,189,779	359,874	6,298,045	50	B	2.31(e)	1.44(e)	2.58	3.33	(12 mo. 7/31/40)	(g)	(g)	14.25	16.38			10.14	20.37	3.33	16.88	18.29
Total:		$61,972,793		$10,194,918																	

Notes: (a) Exclusive of $1,967,232 Premium on Common Stocks

(b) The difference between Total Outstanding and Held by Public is held by Affiliates

(c) Based on 903,975 shares of common stock issued in exchange for former Class A and Class B stocks in May 1938

(d) Earnings for 1938 before revision to $0.65 per share to give effect to compromise settlement under rate gas contract with Memphis Power & Light Co.

(e) Computed on participating basis. Common stocks entitled to participate with Class A $6 preferred stock in additional dividend distributions after payment of regular dividend on preferred stock and $1.50 per share on common stock, on basis of 75% to Class A preferred and 75% to the common stock

(f) No stock held by public prior to September 1939

(g) Prior to issuance of the presently outstanding common stock in May 1937 there were two classes of common stock outstanding

(h) Nine months ended September 30, 1940

EXHIBIT 225

[illegible] NATURAL GAS COMPANIES

[illegible] AND STATES

Company and Issue	Total Outstanding	Holding Affiliate	Amount	% of Total Outstanding
Arkansas-Louisiana Gas Co.				
Common - 2[illegible]8,[illegible]88 shs. - Par $50	$[illegible],[illegible],400	(a) Arkansas Natural Gas Co.	$14,[illegible],400	100.0
Canadian River Gas Co.				
Common	1	(a) Southwestern Development Co.	$ 1	100.0
Chicago District Pipeline Co.				
Common, 7,500 shs. - No Par	6[illegible],000	(a) Natural Gas Investment Co.	$ 6[illegible],000	100.0
Cities Service Gas Co.				
Common, 350,000 shs. - No Par	30,000,000	(a) Empire Gas & Fuel Co. (Del.)	$30,000,000	100.0
Colorado Interstate Gas Co.				
Common, 1,250,000 shs. - No Par	2,352,941	(a) (Southwestern Development Co. (42½%) (Standard Oil Co. of N. J. (42½%) (Public Service Co. of Colorado (15%)	$ 2,352,941	100.0
Hope Natural Gas Co.				
Common, 27[illegible],693 shs. - Par $100	27,969,300	(b) Standard Oil Co. (N. J.)	$27,969,300	100.0
Houston Gulf Gas Co.				
Common, 517,[illegible] shs. - No Par	5,170,080	(a) United Gas Pipeline Co.	$ 5,148,920	99.6
Interstate Natural Gas Co.				
Common, 952,953 shs. - No Par	6,52[illegible],580	(b) (Standard Oil Co. of N. J. (54%) (Columbian Carbon Co. (17%)	$ 4,635,966	71.0

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COMMON STOCKS OF NATURAL GAS COMPANIES

HOLDINGS BY AFFILIATES

Company and Issue	Total Outstanding	Holding Affiliate	Amount	% of Total Outstanding
Lone Star Gas Co.				
Common, 540,000 shs. - No Par	$28,113,220	(c) Lone Star Gas Corp.	$28,113,220	100.0
Kentucky West Virginia Gas Co.				
Common, 100,000 shs. - No Par	1,304,715	(a) Louisville Gas & Electric Co. (Ky.) (40%) Philadelphia Co. (60%)	$ 1,304,715	100.0
Memphis Natural Gas Co.				
Common, 918,860 shs. - Par $5	2,593,400	(a) Commonwealth Gas Corp.	$ 2,211,722	48.15
Michigan Gas Transmission Corp.				
Common, 44,800 shs. - Par $50	2,240,000	(c) Columbia Gas & Electric Corp.	$ 2,240,000	100.0
Mississippi River Fuel Corp.				
Common, 655,220 shs. - Par $10	6,552,200	(d) (United Carbon Co. (13.43%)) (United Gas Corp. (46.65%)) (Standard Oil Co. of N. J. (22.39%)) (Columbian Carbon Co. (17.02%))	$ 6,552,200	
			$ 6,552,200	100.0
Natural Gas Pipeline Co. of America				
Common, 1,500,000 shs. - No Par	3,000,000	(a) (Cities Service Co. (26.6290%)) (Natural Gas Investment Co. (26.6290%)) (Texas Corp. (17.5832%)) (Standard Oil Co. of New Jersey (13.3145%)) (Southwestern Development Co. (13.3145%)) (Columbian Carbon Co. (2.598 %))	$ 3,000,000	
			$ 3,000,000	100.0

COMMON STOCKS OF NATURAL GAS COMPANIES

HOLDINGS BY AFFILIATES

Company and Issue	Total Outstanding	Holding Affiliate	Amount	% of Total Outstanding
New York State Natural Gas Corp.				
Common, 20,000 shs. - Par $100	$ 2,000,000	(f) Lycoming United Gas Corp.	$ 2,000,000	100.0
Northern Natural Gas Co.				
Common, 203,000 shs. - No Par	19,273,460	(b) Lone Star Gas Corp., (30.0%) North American Light & Power Co. (35.0%) United Light & Railways Co. (35.0%)	$19,273,460	
			$19,273,460	100.0
Panhandle Eastern Pipe Line Co.				
Common, 807,367 shs. - No Par	20,184,175	(a) Columbia Oil & Gasoline Corp. (50.08%) Missouri-Kansas Pipe Line Co. (42.02%)	$18,589,685	92.10
Pittsburgh & West Virginia Gas Co.				
Common, 344,000 shs. - No Par	8,600,000	(a) Philadelphia Co.	$ 8,600,000	100.0
Southern Natural Gas Co.				
Common, 691,970 shs. - Par $7.50	5,189,776	(a) Federal Water Service Corp.	$ 2,491,092	48.0
Texoma Natural Gas Co.				
Common, 10,000 shs. - No Par	500,000	(a) Cities Service Co. (26.62%) Natural Gas Investment Co. (26.62%) Southwestern Development Co. (26.62%) Texas Corp. (17.58%) Columbian Carbon Co. (2.52%)	$ 500,000	
			$ 500,000	100.0
United Fuel Gas Co.				
Common, 500,000 shs. - Par $1	500,000	(a) Columbia Gas & Electric Corp.	$ 500,000	100.0
United Gas Pipe Line Co.				
Common, 100,000 shs. - No Par	26,772,535	(a) United Gas Corp.	$26,772,535	100.0

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Company and Issue	Total Outstanding	Holding Affiliate	Amount	% of Total Assets Held
United Natural Gas Co.				
Common	$1,125,000	(a) National Fuel Gas Co.	$1,125,000	80.0
Warfield Natural Gas Co.				
Common, 5,470 shs. - Par $100	547,000	(c) Columbia Gas & Electric Corp.	$ 247,000	100.0
Grand Total			$1,372,000	

Source of Data: (a) Moody's Public Utilities, 1940
(b) Standard Corporation Records
(c) 1939 Annual Report to Federal Power Commission (Form 1-S)
(d) Response to FPC Order No. 51
(f) Working papers of FPC Accountants, Docket Nos. G-111 and G-125

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EXHIBIT 225A

BONDS OF NATURAL GAS COMPANIES SOLD IN PERIOD FROM JANUARY 1, 1935 TO OCTOBER 15, 1940

COST OF MONEY TO ISSUING COMPANIES AND YIELD TO PUBLIC

Company	Approximate Offering Date	Issue	Principal Amount $	Net Cost to Company Amount	Net Cost to Company Cost %	Price to Public Amount	Price to Public Yield %	Held by Public	Held by Institutions	Held by Affiliates
		Moody's A Rating								
Arkansas Louisiana Gas Co. (a)	July 1936	First Mtg. S. F. 4%, 1951	$10,000,000	93.29	4.62	98.00	4.18	-	-	-
Panhandle Eastern Pipe Line Co.	Mar. 1937	First Mtg. S. F. 4%, A, 1952	24,000,000	95.02	4.46	97.50	4.23	4,918,000	18,082,000	-
			$34,000,000	-	-	97.65	4.22			
		Moody's Baa Rating								
Southern Natural Gas Co.	Nov. 1936	First Mtg. P. L. S. F. 4½%, 1951	$15,000,000	96.29	4.85	100.0	4.50	6,447,000	5,961,000	-
		Moody's Ba Rating								
El Paso Natural Gas Co. (b)	June 1936	First Mtg. S. F. 4½%, 1951	$ 7,500,000	94.14	5.06	98.50	4.64	-	-	-
		Moody's B Rating								
El Paso Natural Gas Co. (b)	June 1936	Convertible Debentures, 4 3/4%, 1946	$ 3,750,000	95.16	5.38	100.00	4.75	-	-	-
		No Rating Assigned (All Issues Privately Sold)								
Mississippi River Fuel Corp.	February 1937	First Mtg. P. L. S. F. 4%, 1952	$10,000,000	(d)	(d)	100.00 (c)	4.00	-	8,332,000	-
El Paso Natural Gas Co. (b)	October 1937	First Mtg. S. F., B, 4%, 1952	1,200,000	(d)	(d)	97.75	4.20	-	-	-
" " " " " (b)	December 1938	First Mtg. S. F. 3½%, 1953	6,000,000	(d)	(d)	99.00	3.59	-	6,000,000	-
" " " " "	June 1940	First Mtg. S. F. 3%, 1955	2,500,000	(d)	(d)	98.50	3.13	-	2,500,000	-
Southern Natural Gas Co.	July 1940	First Mtg. S. F. 3%, 1955	500,000	(d)	(d)	98.50	3.13	-	500,000	-
Cities Service Gas Co.	October 1937	First Mtg. P. L. S. F. 4½%, 1952	650,000	(d)	(d)	97.75	4.71	-	572,000	-
Northern Natural Gas Co.	December 1938	First Mtg. P. L. 3 3/4%, 1947-54	20,000,000	(d)	(d)	100.00	3.75	-	20,000,000	-
Arkansas Louisiana Gas Co. (a)	August 1939	First Mtg. S. F. 3½%, A, 1954	16,000,000	98.84	3.35	100.00	3.25	-	16,000,000	-
" " " " (a)	September 1939	First Mtg. 2 3/4%, A, 1940-44	3,300,000	99.20	3.01	100.00	2.75	-	3,300,000	-
	September 1939	First Mtg. 3½%, B, 1945-54	9,700,000	99.20	3.59	100.00	3.50	-	9,700,000	-
			$69,850,000	-	-	99.79	3.57			

Notes:

(a) Arkansas Louisiana Gas Company's $9,100,000 outstanding First Mtg. S. F. 4%, 1951, were retired on Oct. 30, 1939, together with $3,500,000 principal amount of debentures held by parent company. The funds for these purposes were obtained from the sale in Sept. 1939 of $3,300,000 First Mtg. 2 3/4%, A, 1940-44 and $9,700,000 First Mtg. 3½%, B, 1945-54.

(b) Proceeds of $6,000,000 First Mtg. S. F. 3½%, 1953 and of $4,000,000 3% Serial Notes due semi-annually over seven-year period (issued to Chase National Bank) were applied to redemption on January 16, 1939 of: $6,809,000 outstanding First Mtg. S. F., A, 4½%, 1951; $1,145,000 outstanding First Mtg. S. F., B, 4%, 1952; $65,000 outstanding Convertible Debentures, 4 3/4%, 1946 (all but $2,000 converted into common stocks); and $600,000 principal amount of 2½% and 3½% short-term notes and for other corporate purposes.

(c) Assumed price of par.

(d) Net cost to company not available.

Source of Data: Issues in Period from January 1, 1935 to December 31, 1939, from "Security Issues of Electric and Gas Utilities, 1935-1936-1937-1938-1939" issued by Securities and Exchange Commission. Issues in Period from January 1, 1940 to October 15, 1940, from Moody's Public Utilities, 1940 and Supplements to Moody's Public Utilities. Data on issues of Cities Service Gas Company, Mississippi River Fuel Corporation, El Paso Natural Gas Company (1937 and 1938 issues) and Southern Natural Gas Company (October, 1937 issue) were not reported by Securities and Exchange Commission, information thereon having been obtained from Moody's publications.

Schedule No. 7
Sheet 1

EXHIBIT 225A

Recent Financing by Companies Affiliated (Directly and Indirectly) with Canadian River Gas Company, Colorado Interstate Gas Company and Colorado-Wyoming Gas Company

Company	Date of Issue	Issue	Price to Purchasers	Yield to Purchasers %	
...idated Oil Corporation	June 1936	$50,000,000 Debenture, 3½%, 1951	98	3.67	(1)
" " "	August 1938	$25,000,000 Debenture, 3 3/8%, 1950 (Entire issue sold to Equitable Life Assurance Society of the United States)	100	3.38	(1)
...: Service Company of Colorado	November 1939	$40,000,000 First Mtg. 3½%, 1964	102	3.38	(2)
" " "	November 1939	$12,500,000 Debenture, 4%, 1949	102	3.76	(2)
...ard Oil Company (N.J.)	May 1936	$30,000,000 Debenture, 3%, 1961	98	3.12	(1)
" " "	May 1936	$55,000,000 Debenture, 3%, 1961 (Sold to Rockefeller Foundations)	98	3.12	(1)
" " "	July 1938	$50,000,000 Debenture, 2 3/4%, 1953	99	2.83	(1)
" " "	July 1938	$35,000,000 Serial Notes, 1 3/4-2½%, 1943-47. ($31,000,000 sold to public, and $4,000,000 sold to Rockefeller Institute for Medical Research) (Redeemed on July 2, 1940; funds for purpose were obtained from sale in July 1940 of $35,000,000 Promissory Notes, 1¼%-1½%, 1943-47)	100	1.75-2.50	(1)
" " "	July 1940	$35,000,000 Promissory Notes, 1¼-1½%, 1943-47 (The new notes consist of two 1¼% notes of $7,000,000 each due on July 1, 1943 and 1944, sold privately to two purchasers; and three 1½% promissory notes due $7,000,001 on July 1, 1945, $7,000,000 on July 1, 1946, and $6,999,999 on July 1, 1947, evidencing borrowing from two banks)	100	1.25-1.50	(3)
...western Development Company	July 1, 1936	$6,376,348.36 Collateral Loan, 2-4%, 1937-41, payable to Guaranty Trust Company, New York. (Reduction in interest rate from 4% to 3½%, and extension of maturity of balance of $2,562,298.36 beyond July 1, 1941, approved by SEC on May 16, 1939. New 3% collateral note issued as of August 1, 1939, in exchange for outstanding 3½% collateral note). (The 3% note was redeemed on January 2, 1940).	100	2.00-4.00	(4)
	December 19, 1936	$1,762,003.08 Unsecured Notes, 4%, due July 1, 1942 (Issued to holders of company's common stock as a dividend at rate of $43.18 in notes for each share held) (Redeemed on January 3, 1938).	100	4.00	(5)
	November 1, 1937	$3,292,000 Collateral Loan, 4%, 1939-43 payable to Guaranty Trust Company New York	100	4.00	(6)

Schedule No. 7
Sheet 2

EXHIBIT 225A

Recent Financing by Companies Affiliated (Directly and Indirectly) with Canadian River Gas Company, Colorado Interstate Gas Company and Colorado-Wyoming Gas Company

Company	Date of Issue	Issue	Price to Purchasers	Yield to Purchasers %	
Inwestern Development Company	December 1937	$2,040,300 Unsecured Notes 4%, due July 1, 1943 (Issued to holders of company's common stock as a dividend at rate of $50.00 in notes for each share held). (Redeemed on January 2, 1940).	100	4.00	(7)
	January 2, 1940	$4,425,75% Collateral Loan, 3%, 1940-45, payable to Guaranty Trust Company, New York. (Issued to redeem $2,040,300 Unsecured Notes, 4%, due July 1, 1943; and balance of $2,385,45% Collateral Loan, 3% due July 1, 1944.)	100	3.00	(2)

Source of Data:
(1) Moody's Industrials, 1940
(2) Moody's Public Utilities, 1940
(3) Moody's Industrials, Supplements, August 21, 1940
(4) SEC Decisions, Volume 1.
(5) Moody's Public Utilities, 1937
(6) SEC Holding Company, Release No. 881, dated November 15, 1937
(7) Moody's Public Utilities, 1938

	NAME OF CUSTOMER (1)	LOCATION OF SERVICE (2)	PRODUCTION: COST OF GAS AT WELL HEAD (3)	PRODUCTION: COST OF GATHERING (4)	PRODUCTION: RESIDUALS REFINING (5)	TRANSMISSION: VOLUMETRIC COSTS (6)	TRANSMISSION: CAPACITY COSTS: DOM. CONV'L & LOST GAS (7)	TRANSMISSION: CAPACITY COSTS: INDUSTRIAL (8)	DISTRIBUTION (9)	TOTAL COST (10)	REVENUE (11)
1	TRANSMISSION SALES										
2	Direct Industrial Sales										
3	Colorado Fuel & Iron Corp.	Pueblo, Colo.									
4	American Crystal Sugar Co.	Rocky Ford, Colo.									
5	A. T. & S. Fe R.R.	LaJunta, Colo.	212,841.03	38,388.04	(15,799.86)	299,080.80	---	496,798.84	14,618.02	1,047,887.87	1,277,068.76
6	Colo. Portland Cement Co.	Portland, Colo.									
7	The Girdler Corp.	Thatcher, Colo.									
8	Total Direct Industrial Sales										
9	Sales to Public Authorities										
10	U.S. Dept. of Interior	Thatcher, Colo.	16.31	2.94	(1.21)	22.92	57.34	-	1,274.74	1,373.04	440.40
11	Veteran's Administration	Ft. Lyon, Colo.	4,656.27	839.74	(345.65)	6,542.25	14,592.25	-	1,799.37	28,084.23	48,876.64
12	Total Sales to Public Authorities		4,672.58	842.68	(346.86)	6,565.17	14,649.59	-	3,074.11	29,457.27	49,317.04
13	Sales to Other Gas Utilities										
14	Ark. Valley Nat. Gas Co.	Ft. Lyon, Colo.	21.72	3.92	(1.61)	30.51	71.67	-	-	126.21	377.70
15		Ftn. Val., Colo.	341.74	61.63	(25.37)	480.18	-	1,040.93	1,347.62	3,246.70	3,157.12
16		Fowler, Colo.	161.80	29.18	(12.01)	227.34	444.36	63.73	1,223.75	2,136.15	3,125.57
17		Las Animas, Colo.	545.60	98.40	(40.50)	766.60	2,064.13	106.22	1,821.23	5,361.68	9,788.92
18		Manzanola, Colo	53.86	9.71	(4.00)	75.68	114.67	-	1,209.17	1,459.09	1,002.79
19		Ordway, Colo.	199.15	35.92	(14.78)	279.81	329.69	393.00	1,289.33	2,512.12	3,179.88
20		Sugar City, Colo.	17.19	3.10	(1.28)	24.18	71.67	-	1,129.03	1,243.86	300.14
21		Adjustments	-	-	-	-	-	-	801.14	801.14	(581.48)
22	Total Ark. Valley Nat. Gas Co.		1,341.06	241.86	(99.55)	1,884.24	3,096.19	1,603.88	8,821.27	16,888.95	20,350.64
23	Citizen's Utilities Co.	LaJunta, Colo.	1,806.46	326.61	(134.05)	2,536.75	5,841.57	1,614.50	4,393.14	14,383.00	29,969.67
24		Rky. Ford, Colo.	1,169.77	210.96	(86.84)	1,643.58	4,328.94	828.49	3,555.21	11,650.11	20,073.74
25		Adjustments	-	-	-	-	-	-	-	-	437.25
26	Total Citizen's Utilities Co.		2,975.23	536.57	(220.87)	4,180.33	8,170.51	2,442.99	7,948.35	26,033.11	50,470.66
27	City of Colorado Springs	Colo. Spgs., Colo.	17,896.75	3,191.84	(1,313.69)	24,864.89	30,947.61	15,592.68	5,842.95	96,822.53	212,987.46
28	Colorado Wyoming Gas Co.	Arapahoe, Colo.	62,964.33	11,356.37	(4,674.04)	88,467.59	106,532.03	91,134.33	1,872.24	357,651.85	496,450.81
29	Pueblo Gas & Fuel Co.	Pueblo, Colo.	9,946.24	1,798.77	(738.34)	13,974.90	22,854.44	8,691.68	11,693.91	68,196.60	157,572.31
30	Pub. Serv. Co. of Colo.	Aurora, Colo.	802.89	108.73	(44.78)	647.08	1,906.46	-	1,748.37	5,168.77	11,205.78
31		Denver, Colo.	136,063.56	24,638.53	(10,100.43)	191,175.16	392,328.01	99,334.30	24,919.04	858,258.17	2,023,079.31
32		Englewood	1,818.24	327.91	(134.97)	2,564.71	6,966.44	-	2,375.00	13,907.33	33,472.46
33		Fitzsim. Hosp.	6,844.72	1,234.42	(508.10)	9,617.12	1,791.78	18,163.14	2,112.69	39,266.77	44,563.11
34		Littl'n, Colo.	870.37	102.86	(42.34)	1,223.40	2,494.16	329.27	1,212.23	6,069.67	9,913.47
35		Sullivan, Colo.	42.44	7.66	(3.15)	59.63	2,640.99	116.84	1,166.46	5,029.77	868.36
36		U.S. Army Air Sch., Denver	91.27	16.48	(6.78)	128.24	-	-	-	229.19	1,845.20
37	Total Pub. Serv. Co. of Colorado		146,633.49	26,336.56	(10,840.52)	205,183.34	409,127.74	117,943.55	34,134.61	927,918.67	2,124,746.69
38	TOTAL SALES TO OTHER GAS UTILITIES		240,957.10	43,455.67	(17,887.01)	338,555.09	580,708.52	235,409.11	70,313.23	1,491,611.71	3,061,677.58
39	Sales to Associated Gas Utilities										
40	Clayton Gas Co.	Clayton, N.M.	2,299.09	414.53	(170.67)	3,230.33	4,787.63	2,697.92	-	13,258.93	24,706.06
41	Amarillo Oil Co. (Special)	Hartley, Tex.	116.94	21.09	(8.68)	164.31	430.03	95.60	-	819.29	833.00
42		Dalhart, Tex.	8,000.89	1,442.87	(593.91)	11,241.17	10,492.66	12,894.76	-	43,478.14	44,238.54
43		Texline, Tex.	202.16	36.46	(15.01)	284.04	673.37	110.57	-	1,261.59	1,872.47
44	Total Associated Gas Utilities		10,618.78	1,915.09	(788.27)	14,919.85	16,383.69	15,868.85	-	58,817.95	71,646.07
45	Interdepartmental Sales										
46	Gas Used in Co. Operations	Compressor Sta.	9,510.80	1,715.25	(706.01)	13,363.08	-	-	-	23,883.10	20,646.49
47		Co. Dwellings	618.36	111.52	(45.90)	868.80	-	-	-	1,552.77	1,269.71
48		Dehydration Plant	74.52	13.44	(5.53)	104.71	-	-	-	187.14	121.28
49	Total Interdepartmental Sales		10,203.67	1,840.19	(757.44)	14,336.59	-	-	-	25,623.01	22,036.48
50	TOTAL TRANSMISSION SALES - DENVER LINE		479,293.16	86,438.63	(35,579.44)	673,427.80	611,641.80	780,073.80	88,002.36	2,655,297.61	4,481,645.93
51	PRODUCTION SYSTEM SALES										
52	Sales to Other Gas Utilities										
53	Nat. Gas Pipeline of America	Fritch Sta., Tex.	456,334.31	82,298.09	(118,506.69)	-	230,507.53*	-	-	650,631.24	1,376,259.49
54	Sales to Assoc. Gas Utilities										
55	Amarillo Oil Co. (At the Wells)	Contract B	106,381.20	-	(15,056.24)	-	-	-	-	90,324.96	187,889.73
56	(" " ")	Contract C	4.04	-	-	-	-	-	-	4.04	20.17
57	(" " ")	Special, Channing, Tex.	221.55	-	-	-	-	-	-	221.55	332.59
58	Total Assoc. Gas Utilities		106,606.79	-	(15,056.24)	-	-	-	-	90,550.55	188,242.49
59	Interdepartmental Sales										
60	Gas Used in Co. Operations	Compressor Sta.	23.30	4.21	-	-	-	-	-	27.51	37.94
61		Gasoline Plant	7,524.80	1,357.05	-	-	-	-	-	8,881.85	18,306.80
62		Field Operations	2,917.07	526.08	-	-	-	-	-	3,443.15	4,747.72
63		Co. Dwellings	22.11	3.99	-	-	-	-	-	26.10	36.98
64	Total Interdepartmental Sales		10,487.28	1,891.31	-	-	-	-	-	12,378.59	23,128.44
65	TOTAL PRODUCTION SYSTEM SALES		573,428.18	84,189.40	(133,564.93)	-	230,507.53	-	-	753,580.18	1,584,630.42
66	TOTAL TRANSMISSION & PRODUCTION SYSTEM SALES		1,061,721.34	170,628.03	(169,144.37)	673,427.80	1,592,223.13	88,002.36	3,406,867.99	6,036,276.35	

*Rental of Leased Facilities

EXHIBIT

TABLE 1

(ALL FIGURES IN M.C.F. AT UNIFORM PRESSURE BASE OF 14.65 PSIA. 60° F. AND SATURATED)

	NAME OF CUSTOMER (1)	LOCATION OF SERVICE (2)	ANNUAL SALES, 1939 Domestic & Commercial (3)	Gas Lost (4)	Industrial (5)	Total (6)	COINCIDENTAL SYSTEM MAXIMUM DAY DELIVERY, THURSDAY, FEB. 9, 1939 Domestic Commercial Gas Lost (7)	Industrial (8)	Total (9)	INDIVIDUAL MAXIMUM DAY DELIVERY TO INDUSTRIAL CUSTOMERS (10)
1	**Transmission Sales**									
2	Direct Industrial Sales									
3	Colorado Fuel & Iron Corp.	Pueblo, Colo.	-	-	7,857,379	7,857,379		30,563	30,563	32,578
4	American Crystal Sugar Co.	Rocky Ford, Colo.	-	-	332,998	332,998		105	105	7,383
5	Atchison, Topeka & Santa Fe R. R.	La Junta, Colo.	-	-	427,169	427,169		1,522	1,522	1,609
6	Colorado Portland Cement Co.	Portland, Colo.	-	-	1,676,091	1,676,091		2,213	2,213	5,390
7	The Girdler Corp.	Thatcher, Colo.	-	-	-	-		-	-	-
8	TOTAL DIRECT INDUSTRIAL SALES		-	-	9,693,637	9,693,637		34,403	34,403	46,960
9	Sales To Public Authorities									
10	U.S. Dept. of Interior	Thatcher, Colo.	743	-	-	743	4	-	4	-
11	Veterans Administration	Fort Lyon, Colo.	212,065	-	-	212,065	1,018	-	1,018	-
12	TOTAL SALES TO PUBLIC AUTHORITIES		212,808	-	-	212,808	1,022	-	1,022	-
13	Sales To Other Gas Utilities									
14	Arkansas Valley Nat. Gas Co.	Fort Lyon, Colo.	911	78	-	989	5	-	5	-
15		Fountain Valley, Colo.	-	(638)	16,202	15,564		93	93	98
16		Fowler, Colo.	6,685	(256)	980	7,369	31	3	34	6
17		Las Animas, Colo.	23,133	854	882	24,869	144	10	154	10
18		Manzanola, Colo.	2,441	12	-	2,453	8	-	8	-
19		Ordway, Colo.	5,322	(439)	4,187	9,070	23	37	60	37
20		Sugar City, Colo.	731	52	-	783	5	-	5	-
21	TOTAL ARKANSAS VALLEY NAT. GAS CO.		39,225	(397)	22,851	61,077	216	143	359	151
22	Citizens Utilities Co.	La Junta, Colo.	53,575	10,707	17,946	82,228	268	100	368	152
23		Rocky Ford, Colo.	39,632	6,800	6,844	53,276	302	40	342	78
24		Adjustments	2,789	(2,789)	-	-	-	-	-	-
25	TOTAL CITIZENS UTILITIES CO.		95,996	4,718	24,790	135,504	570	140	710	230
26	City of Colorado Springs	Colorado Springs, Colo.	352,414	•	453,567	805,981	2,159	1,447	3,606	1,468
27	Colorado Wyoming Gas Co.		1,130,975	•	1,736,674	2,867,649	7,432	3,902	11,334	8,580
28	Pueblo Gas & Fuel Co.	Pueblo, Colo.	324,385	•	128,603	452,992	1,595	534	2,127	630
29	Public Service Co. of Colo.	Aurora, Colo.	27,458	•	-	27,458	133	-	133	-
30		Denver, Colo.	4,158,140	•	2,038,742	6,196,882	27,370	8,734	36,104	9,352
31		Englewood, Colo.	82,810	•	-	82,810	486	-	486	-
32		Fitzsimmons Hospital	8,635	•	303,101	311,736	125	1,490	1,615	1,710
33		Littleton, Colo.	22,421	•	3,556	25,977	174	31	205	31
34		Sullivan, Colo.	228	•	1,705	1,933	254	10	264	11
35		U.S. Army Air School, Denver, Colo.	4,157	-	-	4,157	-	-	-	-
36	TOTAL PUBLIC SERVICE CO. OF COLO.		4,305,649	•	2,247,104	6,650,953	28,542	10,265	38,807	11,104
37	TOTAL SALES TO OTHER GAS UTILITIES		5,261,187		4,712,989	10,974,176	40,512	16,131	56,643	22,169
38	Sales to Associated Gas Utilities									
39	Clayton Gas Co.	Clayton, N.M.	51,154	6,356	47,200	104,710	334	254	588	254
40	Amarillo Oil Co. (Special)	Hartley, Tex.	4,046	375	905	5,326	30	9	39	9
41		Dalhart, Tex.	122,493	4,383	237,503	364,379	732	1,214	1,946	1,214
42		Texline, Tex.	5,974	619	2,614	9,207	40	17	57	17
43	TOTAL ASSOCIATED GAS UTILITIES		183,667	11,733	288,222	483,622	1,136	1,494	2,630	1,494
44	Interdepartmental Sales									
45	Gas Used in Company Operations	Compressor Stations	-	-	433,160	433,160				
46		Company Dwellings	28,162	-	-	28,162				
47		Dehydration Plant	-	-	3,394	3,394				
48	TOTAL INTERDEPARTMENTAL SALES		28,162	-	436,554	464,716	-	-	-	-
49	TOTAL TRANSMISSION SALES (DENVER LINE)		6,897,537		15,131,402	21,828,939	42,670	52,328	94,998	70,617
							44.917%	55.083%	100.000%	
50	oduction System Sales									
51	Sales to Other Gas Utilities									
52	Natural Gas Pipeline Of America	Fritch Sta. Tex.				20,783,301				
53	Sales To Associated Gas Utilities									
54	Amarillo Oil Co. (At the Wells)	Contract "B"				4,799,484				
55	" " "	Contract "C"				184				
56	" " "	Special Channing, Tex.				10,090				
57	TOTAL ASSOCIATED GAS UTILITIES					4,809,758				
58	Interdepartmental Sales									
59	Gas Used in Company Operations	Compressor Station				1,061				
60		Gasoline Plant				342,701				
61		Field Operations				132,855				
62		Company Dwellings				1,007				
63	TOTAL INTERDEPARTMENTAL SALES					477,624				
64	TOTAL PRODUCTION SYSTEM SALES					26,070,683				
65	TOTAL TRANSMISSION & PRODUCTION SYSTEM SALES					47,899,622				

• Gas Lost is included in Domestic and Commercial Classification only

EXHIBIT 226
TABLE 2
2300

TABLE 4

CANADIAN RIVER GAS COMPANY AND COLORADO INTERSTATE GAS COMPANY EXHIBIT

SUMMARY OF COST OF SERVICE

YEAR 1939

	Cost
OPERATING REVENUE DEDUCTIONS	
Operating Expenses	
Natural Gas Production	$321,619.38
Natural Gas Transmission	701,949.17
Natural Gas Distribution	66,737.01
Total Operating Expenses	1,090,305.56
Depreciation	
Natural Gas Production	66,888.96
Natural Gas Transmission	314,885.94
Natural Gas Distribution	5,573.00
Natural Gas General	33,022.20
Gas Plant Held for Future Use (Transmission)	-
Total Depreciation	420,372.10
Depletion	
Natural Gas Production	44,865.27
Taxes	
Federal Income	457,929.15
State of Colorado Income	27,514.12
State of Texas Gross Receipts	34,220.09
Property	236,704.04
Labor	21,437.77
Corporate and Miscellaneous	12,283.63
Total Taxes	790,088.80
Non-Recurring Expenses	267.79
TOTAL OPERATING REVENUE DEDUCTIONS	$2,345,890.52
EXPLORATION AND DEVELOPMENT COSTS	
Delay Rentals	10,401.58
Non-Productive Well Drilling	29,293.73
Abandoned Leases	1,878.18
TOTAL EXPLORATION AND DEVELOPMENT COSTS	$ 41,573.49

COLORADO-WYOMING GAS COMPANY

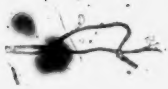
SUMMARY OF COST OF SERVICE AND COMPARISON WITH REVENUES

YEAR 1939

TABLE NO. 1

Name of Customer (1)	Location of Service (2)	Cost of Gas Purchased: Capacity: Volumetric (3)	Cost of Gas Purchased: Capacity: Domestic Commercial & Lost Gas (4)	Cost of Gas Purchased: Capacity: Industrial (5)	Transmission: Capacity: Volumetric (6)	Transmission: Capacity: Domestic Commercial & Lost Gas (7)	Transmission: Capacity: Industrial (8)	Distribution (9)	Total Cost (10)	Revenues (11)
1. Residential Sales - Right-of-Way Customers	Several Pts. in Colorado	137.10	-	-	60.93	-	-	1,555.53	1,753.56	1,377.17
2. Commercial Sales - Green Gables Country Club	Denver, Colo.	90.62	-	-	40.28	-	-	-	130.90	676.94
3. Direct Industrial Sales										
a. Emerado Petroleum Co.	Cheyenne, Wyo.									
b. Adolph Coors	Golden, Colo.									
c. Board of Water Commissioners of Denver	Marston Lake, Colo.									
d. Colorado Portland Cement Co.	La Porte, "									
e. Continental Oil Co.	Wellington Field Colorado									
f. Denver Pressed Brick Co.	Loveland, Colo.	76,451.52	-	73,750.37*	33,978.82	-	59,898.94*	5,246.73	249,326.38	236,385.41
g. Great Western Sugar Co.										
h. Golden Fire Brick Co.										
i. Buer - Empsen Co.										
j. Producers Canning Co.										
k. Public Service Co. of Colorado, (Valmont Plant)										
l. International Metal Foundation										
m. Thomas Bate & Sons										
4. Sales to U.S. War Department										
Ft. Logan	Ft. Logan, Colo.	423.56	-	192.54	188.25	-	156.38	-	960.73	3,510.40
Ft. Warren	Ft. Warren, Wyo.	870.11	-	446.33	388.72	-	362.51	571.23	2,636.90	7,410.80
Total Sales, U.S. War Department		1,293.67	-	638.87	576.97	-	518.89	571.23	3,597.63	10,921.20
5. Sales to Non-Associated Gas Utilities										
Greeley Gas & Fuel Co.	Greeley, Colo.	8,215.55	11,361.26	866.42	3,664.72	7,944.76	703.69	765.27	33,551.67	63,664.56
Highway Gas Co.	Loveland, "	260.05	291.31	-	115.58	203.71	-	470.52	1,341.17	693.42
Total Sales Non-Associated Gas Utilities		8,505.60	11,652.57	866.42	3,780.30	8,148.47	703.69	1,235.79	34,892.84	64,357.98
6. Sales to Associated Gas Utilities										
Cheyenne Light, Fuel & Power Co.	Cheyenne, Wyo.	23,203.33	33,823.12	2,599.25	10,312.70	23,652.02	2,111.06	907.69	96,609.17	182,151.72
Public Service Co. of Colorado	Denver, Colo. Fringe	9,261.93	5,167.00	5,434.79	4,116.46	3,613.20	4,414.06	4,359.20	36,366.64	46,246.54
	Golden, "	6,621.19	6,362.92	2,371.70	2,944.12	4,449.50	1,926.26	1,067.56	25,716.25	33,896.06
	Boulder, "	8,511.64	14,320.40	630.12	3,782.99	10,014.04	511.77	1,082.55	38,853.51	66,322.51
	Brighton, "	1,375.06	1,977.87	87.52	611.14	1,383.10	71.08	525.49	6,031.26	10,473.65
	Ft. Lupton, Colo.	488.84	735.95	-	217.26	514.64	-	475.15	2,431.84	3,727.76
	Longmont, "	2,202.43	3,173.74	52.51	978.87	2,219.39	42.65	614.91	9,284.55	16,913.82
	Berthoud, "	864.19	383.31	-	117.42	268.04	-	497.67	1,530.63	2,073.96
	Johnstown, "	432.79	659.29	-	192.35	461.03	-	548.67	2,294.13	3,303.76
	Loveland, "	2,151.80	2,361.18	358.82	956.37	1,651.14	291.43	673.86	8,444.60	16,232.75
	Ft. Collins, "	18,809.64	26,923.58	5,207.25	8,359.93	18,827.26	4,229.25	885.83	83,242.74	133,876.99
Total Sales to Associated Gas Utilities		73,325.84	95,888.41	16,741.06	32,589.61	67,053.36	13,597.56	11,638.58	310,835.32	515,219.52
Chilled Revenue Change - Net		(957.32)	-	-	(425.47)	-	-	-	(1,382.79)	-
Miscellaneous Revenues										3.08
Total Gas Sales		158,847.03	107,540.98	91,997.62	76,599.11	75,201.83	74,719.08	20,247.86	599,153.84	828,941.30

*Note: The capacity requirements of the Valmont Plant of the Public Service Company of Colorado are not included. The service at this point is an emergency standby nature and cannot be determined by strict consideration of capacity required and volume of gas delivered.



COLORADO-WYOMING GAS COMPANY

SCHEDULE OF GAS SALES DELIVERIES DURING THE CALENDAR YEAR 1939 AND MAXIMUM DAY GAS SALES DELIVERIES FOR 12 MONTHS ENDING JUNE 30, 1939

All figures in M. C. F. at Uniform Pressure Base of 14.65# Per Sq.In. Absolute)

	Name of Customer (1)	Location of Service (2)	Annual Sales 1939: Domestic & Commercial (3)	Gas Lost (4)	Industrial (5)	Total (6)	Maximum Day Deliveries on Colorado Interstate Gas Co. Peak Day - Thurs. Feb. 9, 1939: Domestic Commercial Gas Lost (7)	Industrial (8)	Total (9)	Coincidental System Maximum Delivery to Industrial Customers (10)	Individual Maximum Day Delivery to Industrial Customers (11)
1	Residential Sales - Right-of-Way Customers	Several Points in Colorado	2,461	-	-	2,461	-	-	-	-	-
2	Commercial Sales - Green Gables Country Club	Denver, Colo.	1,480	-	-	1,480	-	-	-	-	-
3	Direct Industrial Sales										
4	American Petroleum Co.	Cheyenne, Wyo.	-	-	-	-	-	-	-	-	-
5	Adolph Coors	Golden, Colo.	-	-	18,617	18,617	-	62	62	86	51
6	Bd. of Water Comrs. of Denver	Barston Lake, Colorado	-	-	-	-	-	-	-	-	-
7	Colo.Portland Cement Co.	LaPorte, Colo.	-	-	7,680	7,680	-	68	53	66	38
8	Continental Oil Co.	Wellington Field, Colorado	-	-	8,894	8,894	-	28	28	23	28
9	Denver Pressed Brick Co.	Loveland, Colo.	-	-	44,678	44,678	-	171	171	138	226
10	Great Western Sugar Co.	Johnstown, Colo.	-	-	312,648	312,648	-	1,099	1,099	1,057	1,809
11	Golden Fire Brick Co.	Golden, Colo.	-	-	57,100	57,100	-	220	220	128	258
12	Buner Hopson Co.	Brighton, Colo.	-	-	53,620	53,620	-	71	71	78	216
13	Producers Coating Co.	Ft.Collins, Colo.	-	-	283	283	-	-	-	-	-
14	Public Service Co. of Colo.	Valmont Plant Near Boulder, Colo.	-	-	26,710	26,710	-	-	-	-	**
15	International Metal Foundation	Denver, Colo.	-	-	-	-	-	-	-	-	-
16	Thos. Bate and Sons	Denver, Colo.	-	-	68	68	-	-	-	-	-
17	Total Direct Industrial Sales		-	-	1,866,728	1,866,728	-	1,704	1,704	1,529	2,627
18	Sales to U. S. War Department										
19	Ft. Logan	Ft. Logan, Colo.	-	-	7,672	7,672	-	22	22	30	22
20	Ft. Warren	Ft. Warren, Wyo.	-	-	15,566	15,566	-	51	51	48	51
21	Total Sales U. S. War Department		-	-	23,237	23,237	-	73	73	78	73
22	Sales to Non-Associated Gas Utilities										
23	Greeley Gas & Fuel Co.	Greeley, Colo.	129,921	*	17,485	147,406	786	99	840	82	99
24	Highway Gas Co.	Loveland, Colo.	4,849	*	-	4,849	19	-	19	-	-
25	Total Sales Non-Associated Gas Utilities		134,770		17,485	152,255	780	99	859	82	99
26	Sales to Associated Gas Utilities										
27	Cheyenne L.,Fuel & Power Co.	Cheyenne, Wyo.	369,116	*	45,681	414,807	2,206	297	2,503	260	297
28	Public Service Co. of Colo.	Denver, Colo:	64,686	*	100,886	165,572	337	621	958	600	621
		Fringe									
29		Golden, Colo.	98,102	*	80,519	178,621	615	254	869	270	771
30		Boulder, Colo.	143,109	*	9,064	152,168	934	72	1,006	60	72
31		Brighton, Colo.	23,002	*	1,880	24,882	129	10	139	-	30
32		Ft.Lupton, Colo.	8,739	*	-	8,739	48	-	48	-	-
33		Longmont, Colo.	38,514	*	1,089	39,573	207	6	213	5	6
34		Berthoud, Colo.	6,772	*	-	6,772	26	-	26	-	-
35		Johnstown, Colo.	7,757	*	-	7,757	43	-	43	-	-
36		Loveland, Colo.	32,648	*	6,000	38,648	184	61	195	37	61
37		Ft.Collins, Colo.	267,282	*	58,929	326,211	1,756	886	2,642	660	886
38	Total Sales to Associated Gas Utilities		977,225		322,980	1,300,205	6,254	1,927	8,181	1,792	1,913
39	Unbilled Revenue Change - Net	Various Points in Wyo. and Colo.	(6,244)		(11,970)	(17,214)	-	-	-	-	-
40	Total Gas Sales		1,110,727		1,726,980	2,838,717	7,014	3,772	10,786	4,949	5,658
							64.145%			46.898%	

* Gas Lost included in Domestic & Commercial Classification.

** Maximum day delivery to Valmont plant not included. This load is of an emergency standby nature and is seldom served. Allocation of capacity on the basis of emergency use during off-peak periods to this customer is not practical due to this peculiarity. Revenue from this standby service in addition to specific costs is therefore to be distributed to the general system.

EXHIBIT 227

COLORADO WYOMING GAS COMPANY
STATEMENT OF GAS HANDLED - YEAR 1939
(All figures on uniform base of 14.65# sq. in. absolute)

	Particulars (1)	Total (2)
1	**Gas Disbursements**	
2	Net Transmission System Sales	2,856,831
3	Unbilled Revenue Adjustment - Net	(17,114)
4	Total Sales	2,839,717
5	Gas Used in Company Operations	30,893
6	Leakage and Unaccounted For	48,108
7	Total Disbursements	2,918,718
8	**Gas Receipts**	
9	Gas Purchased	
10	Colorado Interstate Gas Co.	
11	Resale to Others	2,805,762
12	Unbilled Revenue Adjustment - Net	(17,114)
13	Company Operations	30,893
14	System Losses	48,108
15	Total Colorado Interstate	2,867,649
16	Goodstein Pipeline Co.	
17	Resale to Others	47,878
18	Ed Mosher	
19	Resale to Others	3,191
20	Ft. Collins	
21	Resale to Others	0
		2,918,718

EXHIBIT 227

TABLE 3

COLORADO WYOMING GAS COMPANY

EXHIBIT 227

SUMMARY OF COST OF SERVICE

TABLE 4

YEAR 1939

	Cost
OPERATING REVENUE DEDUCTIONS	
Gas Purchased for Resale	$ 498,103.04
Operating Expenses	
Natural Gas Transmission)	
Natural Gas Distribution)	41,091.03
General and Administrative	26,773.23
Total Operating Expenses	67,864.26
Depreciation	
Natural Gas Transmission	35,364.03
Natural Gas Distribution	1,500.35
Natural Gas General	1,101.29
Gas Plant Held for Future Use (Transmission)	-
Total Depreciation	37,965.67
Taxes	57,105.58
Non-Recurring Expenses	-
TOTAL OPERATING REVENUE DEDUCTIONS	661,038.55
RETURN AT 6% ON NET BOOK COST - ADJUSTED OF GAS PLANT IN SERVICE	
Natural Gas Transmission	74,905.01
Natural Gas Distribution	2,092.93
Natural Gas General and Intangible Plant	380.11
TOTAL RETURN ON PLANT	77,378.05
RETURN AT 6% ON WORKING CAPITAL	
Natural Gas Transmission	454.65
TOTAL RETURN ON WORKING CAPITAL	454.65
TOTAL COST OF SERVICE	738,871.25
ADJUSTMENT IN COST OF GAS PURCHASED FOR RESALE	
Less Gas Purchased for Resale Above	498,103.04
Plus Gas Purchased for Resale Adjusted	358,385.63
TOTAL COST OF SERVICE	$ 599,153.84

SUMMARY OF COST OF GAS PURCHASED FOR RESALE

YEAR 1959

			M.C.F.		Cost	
1	Colorado Interstate Gas Company					
2	Volumetric Costs - Domestic, Commercial and Gas Lost		1,130,975			
3	Industrial		1,736,674			
4	Total		2,867,649		$158,113.28	
5	Capacity Costs - Domestic, Commercial and Gas Lost - 7,452 M.C.F.	53.89%		106,532.05		
6	Industrial	46.11%		91,134.53		
7	Total				197,666.58	
8	Distribution Costs -				1,872.24	
9	Total Cost of Gas Purchased from Colorado Interstate Gas Co.				357,651.86	
10	Less Gas Used in Company Operations - (At prices charged to operations)		(30,893)		(4,373.12)	
11	Net Cost of Gas Purchased from Colorado Interstate Gas Co. for resale					$353,278.28
12	Goodstein Pipeline Company					
13	Berthoud Field		47,878			4,787.80
14	Ed Mosher					
15	Berthoud Field		3,191			319.10
16	Less System Leakage and Unaccounted for Gas		(48,108)			
17	Total Cost of Gas Purchased for Resale		2,859,717			$358,385.63

Note: (1) Distribution Costs included in Cost of Purchased Gas are allocated to Capacity Costs in proportion to the amount thereof for the purpose of assessing the proper proportion to each customer of the Colorado Wyoming Gas Co.

Recapitulation of Cost

Volumetric Costs (Line 4, less line 10, plus lines 13 and 15)	$158,847.03
Capacity Costs - Domestic, Commercial and Gas Lost	107,540.98
Industrial	91,997.62
	$358,385.63

EXHIBIT 227

EXHIBIT 227

TABLE 6

COLORADO - WYOMING GAS COMPANY

SUMMARY OF COST OF TRANSMISSION

YEAR 1939

(1)	Percent (2)	Cost (3)	Volumetric Costs (4)	Capacity Costs (5)
Transmission Lines Operation	2.47	5,436.63		5,436.63
Compressing Station Operation - Labor and Superintendence	7.55	16,649.00	8,324.50	8,324.50
Compressing Station Operation - Fuel, Supplies and Expenses	2.59	5,710.06	5,710 .06	-
Transmission Lines Maintenance	1.04	2,298.75		2,298.75
Compressor Station Maintenance	.93	2,051.11	2,051.11	
Proportion of General Expenses	9.50	20,949.80		20,949.80
Annual Accrual for Depreciation of Transmission Plant (Except Compressing Stations)	13.67	30,141.32		30,141.32
Annual Accrual for Depreciation of Transmission Compressing Stations	2.37	5,222.71	3,917.03*	1,305.68
Proportion of Annual Accrual for Depreciation of General Plant	.49	1,071.56		1,071.56
Transmission Plant Property Taxes	11.48	25,322.32		25,322.32
Proportion of General and Intangible Plant Property Taxes	.06	124.59		124.59
Payroll Taxes	.57	1,251.36		1,251.36
Miscellaneous Taxes	.97	2,143.34		2,143.34
Federal Income Taxes on Transmission Plant	10.63	23,436.77	11,718.38	11,718.39
State of Colorado Income Taxes	1.29	2,851.72	1,425.86	1,425.86
Proportion of Federal Income Taxes on General and Intangible Plant	.05	115.72		115.72
Proportion of State of Colorado Income Taxes on General and Intangible Plant	.01	14.08		14.08
Return on Transmission Plant	33.96	74,905.01	37,452.50	37,452.51
Proportion of Return on General and Intangible Plant	.16	369.85		369.85
Return on Working Capital	.21	454.65		454.65
Total Cost of Transmission	100.00	220,520.35	70,599.44	149,920.91

*75% of Compressing Station accruals, being accruals for compressing station equipment.

Note: Transmission lines operation includes $1,029.72 transportation expense on industrial gas sold to Denver Pressed Brick Co., included in general system transmission costs. No special consideration need therefore be given to the service to such customer.

Volume of gas transmitted - M.C.F. 2,839,717
Average Volumetric Costs per M.C.F. transmitted $ .024861

EXHIBIT 227

COLORADO-WYOMING GAS COMPANY
SUMMARY OF COST OF DISTRIBUTION
YEAR 1939

TABLE 7

Account (1)	Percent (2)	Cost (3)	Allocated Equally Per Customer (4)	Allocated on Basis of Adjusted Book Cost of Plant (5)
Measuring Stations Operation	40.67	$ 8,235.72	$ 8,235.72	-
Measuring Stations Maintenance	3.51	709.76		$ 709.76
Proportion of General Expenses *	28.76	5,823.43	5,361.38 *	462.05 *
Annual Accrual for Depreciation of Distribution Plant	7.41	1,500.35		1,500.35
Proportion of Annual Accrual for Depreciation of General Plant	0.15	29.73		29.73
Distribution Plant Property Taxes	3.48	705.06		705.06
Proportion of General & Intangible Plant Property Taxes	0.02	3.46		3.46
Payroll Taxes	1.68	339.56	26.94 *	312.61 *
Miscellaneous Taxes	0.29	59.48		59.48
Federal Income Taxes on Distribution Plant	3.23	654.85		654.85
State of Colorado Income Taxes	0.39	79.68		79.68
Proportion of Federal Income Taxes on General & Intangible Plant	0.02	3.21		3.21
Proportion of State of Colorado Income Taxes on General & Intangible Plant	-	-.39		.39
Return on Distribution Plant	10.34	2,092.93		2,092.93
Proportion of Return on General & Intangible Plant	.05	10.26		10.26
Return on Working Capital	-	-0-		-
Total Cost of Distribution	100.00	$20,247.84	$13,624.04	$6,623.82

* NOTE: General expenses and payroll taxes allocated in proportion to direct expenses.

EXHIBIT 22

COLORADO-WYOMING GAS COMPANY
SUMMARY OF COST OF DISTRIBUTION
YEAR 1939

TABLE 7 (Continued)

Location (1)	Allocated Equally Per Customer (2)	Allocated on Basis of Adjusted Book Cost of Plant as at 12-31-39 (3)	Total (4)
Highway Gas Co. (near Loveland)	$ 378.45	$ 92.07	$ 470.52
Fort Collins Town Border	378.45	507.38	885.83
Cheyenne Town Border	378.45	529.24	907.69
Laramie County Poor Farm	378.45	5.96	384.41
Lincoln Cabins	378.45	13.25	391.70
North Valve House at Wellington for measuring gas to Continental Oil Co.	378.45	67.56	446.01
South Fort Collins Meter setting for measuring gas to tap customers	378.45	8.61	387.06
Whittaker Station for measuring gas to tap customers	378.45	13.91	392.36
Denver, Colo. Fringe-West Colfax Avenue	378.45	273.56	652.01
Denver, Colo. Fringe-West 32nd Avenue	378.45	190.10	568.55
Denver, Colo. Fringe-Wheatridge	378.45	134.46	512.91
Denver, Colo. Fringe-Green Gables Country Club	378.45	28.68	406.93
Denver, Colo. Fringe-Griffith Lane	378.45	27.16	405.61
Denver, Colo. Fringe-Arvada	378.45	140.42	518.87
Denver, Colo. Fringe-West 6th Avenue	378.45	5.96	384.41
Denver, Colo. Fringe-Fort Logan	378.45	149.04	527.49
Denver, Colo. Fringe-Federal Prison Farm	378.45	3.97	382.42
Golden Town Border	378.45	305.36	683.81
Golden Fire Brick Company	378.45	249.72	628.17
Newell Ave. (Golden, Colo.)	378.45	5.30	383.75
Boulder Town Border	378.44	704.11	1,082.55
Brighton Town Border	378.44	147.06	525.49
Fort Lupton Town Border	378.44	96.71	475.15
Longmont Town Border	378.44	236.47	614.91
Berthoud Town Border	378.44	119.23	497.67
Johnstown	378.44	170.23	548.67
Greeley Town Border	378.44	386.83	765.27
Great Western Sugar Co.	378.44	354.37	732.81
Loveland Town Border	378.44	296.42	673.86
Denver Pressed Brick Co.	378.44	44.38	422.82
Denver Board of Water Commission Marston Lake Plant	378.44	76.84	455.28
Adolph Coors Co., Golden, Colo.	378.44	51.00	429.44
Valmont Plant of Public Service Co. of Colorado (near Boulder Lateral)	378.44	619.33	997.77
Ramer-Empson Co., Brighton, Colo.	378.44	148.37	526.81
Colorado Portland Cement Co., La Porte, Colorado	378.44	229.18	607.62
U. S. War Dept. Ft. Warren, Wyoming	378.44	192.79	571.23
Total	$13,624.04	$6,623.82	$20,247.86

COLORADO WYOMING GAS CO.

TOTAL VOLUME OF GAS SALES DELIVERIES DURING THREE CALENDAR YEARS 1937, 1938, 1939
(All figures in M.C.F. at uniform base of 14.65# Sq. In. absolute)

Name of Customer (1)	Location of Service (2)	Domestic and Commercial (3)	Gas Lost* (4)	Industrial (5)	Total (6)
Residential Sales - Right-of-way Customers.	(In Colo.)	10,245	-	-	10,245
Commercial Sales - Green Gables Country Club	Denver	6,767	-	-	6,767
Direct Industrial Sales					
Amerada Petroleum Co.	Cheyenne, Wyo.			35,102	35,102
Adolph Coors	Golden, Colo.	-	-	32,692	32,692
Board of Water Commissioners of Denver	Marston Lk. Colo.	-	-	24,779	24,779
Colorado Portland Cement Co.	LaPorte, Colo.	-	-	2,284,217	2,284,217
Continental Oil Co.	Wellington Fld. Colo.	-	-	12,799	12,799
Denver Pressed Brick Co.	Loveland, Colo.	-	-	107,271	107,271
Great Western Sugar Co.	Johns'n, Colo.	-	-	847,785	847,785
Golden Fire Brick Co.	Golden, Colo.	-	-	185,141	185,141
Rumer Empson Co.	Brighton, Colo.	-	-	92,771	92,771
Producer's Canning Co.	Ft. Collins, Colo.	-	-	1,804	1,804
Public Service Co. of Colorado	Valmont Plant near Boulder, Colo.	-	-	30,224	30,224
International Metal Foundation	Denver, Colo.	-	-	3,367	3,367
Thomas Fate & Sons	Denver, Colo.	-	-	68	68
Total Direct Industrial Sales		-	-	3,658,020	3,658,020
Sales to U.S. War Department					
Ft. Logan	Ft. Logan, Colo.	-	-	21,879	21,879
Ft. Warren	Ft. Warren, Wyo.	-	-	45,839	45,839
Total War Department Sales		-	-	67,718	67,718
Sales to Non-Associated Gas Utilities					
Greeley Gas & Fuel Co.	Greeley, Colo.	361,745	*	52,256	414,001
Highway Gas Co.	Loveland, Colo.	20,396	*	-	20,396
Total Non-Associated Gas Utilities Sales		382,141	*	52,256	434,397
Sales to Associated Gas Utilities					
Cheyenne Light, Fuel & Power Co.	Cheyenne, Wyo.	1,057,006	*	149,586	1,206,592
Public Service Co. of Colorado	Denver Fringe	176,611	*	294,224	470,835
	Golden, Colo.	112,852	*	227,237	340,089
	Boulder, Colo.	407,547	*	29,142	436,689
	Brighton, Colo.	63,272	*	4,620	67,892
	Ft. Lupton, Colo.	24,482	*	-	24,482
	Longmont, Colo.	96,745	*	3,567	100,312
	Berthoud, Colo.	13,418	*	-	13,418
	Johnstown, Colo.	20,323	*	-	20,323
	Loveland, Colo.	86,031	*	19,608	105,639
	Ft. Collins, Colo.	739,590	*	279,099	1,018,689
Total Associated Gas Utilities Sales		2,797,877	*	1,007,083	3,804,960
Unbilled Revenue Change - Net	Various Points, Colo. and Wyo.	9,030	*	1,404	9,430
TOTAL GAS SALES		3,205,056	*	4,786,481	7,991,537

*Gas Lost included in Domestic and Commercial Classification

COLORADO WYOMING GAS COMPANY

STATEMENT OF GAS HANDLED - THREE YEARS - 1937, 1938, 1939

(ALL FIGURES ON UNIFORM BASE OF 14.65# Sq. In. Absolute).

	Particulars (1)	Location of Purchase (2)	Three-year Total (3)
(1)	GAS DISBURSEMENTS		
(2)	Net Transmission System Sales		7,982,107
(3)	Unbilled Revenue Adjustment		9,430
(4)	Total Sales		7,991,537
(5)	Gas Used in Company Operations		95,103
(6)	Leakage and Unaccounted For		90,828
(7)	Total Disbursements		8,177,468
(8)	GAS RECEIPTS		
(9)	Gas Purchased		
(10)	Colorado Interstate Gas Co.		
(11)	Resale to Others		7,822,948
(12)	Unbilled Revenue Change-Net		9,430
(13)	Use in Company Operations		95,103
(14)	System Losses		90,828
(15)	Total Colorado Interstate Gas Co.	Arapahoe Sta.	8,018,309
(16)	Goodstein Pipeline Co.	Berthoud Field	
(17)	Resale to Others		155,686
(18)	Ed Mosher	Berthoud Field	
(19)	Resale to Others		3,191
(20)	Ft. Collins Producing Co.	Wellington Field	
(21)	Resale to Others		282
(22)	Total Receipts		8,177,468

TABLE 10

2312

EXHIBIT 228

Table 11

COLORADO WYOMING GAS COMPANY

SUMMARY OF COST OF SERVICE

THREE YEARS - 1937, 1938 & 1939

OPERATING REVENUE DEDUCTIONS	
Gas Purchased for Resale	1,377,107.84
Operating Expenses	
Natural Gas Transmission)	
Natural Gas Distribution)	125,425.36
General and Administrative	78,038.40
Total Operating Expenses	203,463.76
Depreciation	
Natural Gas Transmission	106,384.80
Natural Gas Distribution	4,501.06
Natural Gas General	2,813.46
Gas Plant Held for Future Use (Transmission)	118.36
Total Depreciation	113,817.68
Taxes	168,626.94
Non Recurring Expenses	3,011.29
TOTAL OPERATING REVENUE DEDUCTIONS	1,866,027.49
RETURN AT 6% ON NET BOOK COST-ADJUSTED OF GAS PLANT IN SERVICE	
Natural Gas Transmission	231,296.77
Natural Gas Distribution	6,462.68
Natural Gas General & Intangible Plant	1,173.78
TOTAL RETURN ON PLANT	238,933.18
RETURN AT 6%ON WORKING CAPITAL	
Natural Gas Transmission	1,363.95
TOTAL RETURN ON WORKING CAPITAL	1,363.95
TOTAL COST OF SERVICE	2,106,324.62
ADJUSTMENT IN COST OF GAS PURCHASED FOR RESALE	
Less Gas Purchased for Resale Above	1,377,107.84
Plus Gas Purchased for Resale Adjusted	Not determined
TOTAL COST OF SERVICE	Not determined

EXHIBIT

TABLE I2

COLORADO-WYOMING GAS COMPANY
SUMMARY OF COST OF TRANSMISSION
THREE YEARS, 1937-1938-1939

Line	Account (1)	Percent (2)	Cost (3)	Volumetric Costs (4)	Capacity Costs (5)
1.	Transmission Lines Operations	2.73	$ 18,402.63		$ 18,402.63
2.	Compressing Station Operation - Labor and Supervision	7.07	47,681.33	$ 23,840.66	23,840.67
3.	Compressing Station Operation - Fuels, Supplies, Expense	2.39	16,124.99	16,124.99	
4.	Transmission Lines Maintenance	2.13	14,313.04		14,313.04
5.	Compressor Station Maintenance	.82	5,586.31	5,586.31	
6.	Proportion of General Expense	9.37	63,218.13		63,218.13
7.	Annual Accrual for Depreciation of Transmission Plant (except Compressing Station)	13.41	90,497.03		90,497.03
8.	" " " " " " Compressing Stations	2.37	16,006.12	12,004.59*	4,001.53
9.	Proportion of Annual Accrual for Depreciation of General Plant	.40	2,737.50		2,737.50
10.	Transmission Plant Property Taxes	11.14	75,152.75		75,152.75
11.	Proportion of General and Intangible Property Taxes	.06	369.77		369.77
12.	Payroll Taxes	.50	3,392.49		3,392.49
13.	Miscellaneous Taxes	.96	6,487.30		6,487.30
14.	Federal Income Taxes on Transmission Plant	10.45	70,464.40	35,232.20	35,232.20
15.	State of Colorado Income Taxes	1.05	7,112.28	3,556.14	3,556.14
16.	Proportion of Federal Income Taxes on General and Intangible Plant	.05	347.92		347.92
17.	" " State of Colorado Income Taxes on General and Intangible Plant	.01	35.13		35.13
18.	Return on Transmission Plant	34.28	231,296.77	115,648.38	115,648.39
19.	" " Proportion of General and Intangible Plant	.17	1,142.04		1,142.04
20.	" " Working Capital	.20	1,363.95		1,363.95
21.	Non-recurring Expenses	.44	3,011.29		3,011.29
22.	Total Cost of Transmission	100.00	$674,743.17	$211,993.27	$462,749.90
23.	Average Cost per year				$154,249.97

* 75 Percent of Compressing Station Accruals being accruals for compressing station equipment

NOTE: Transmission lines operations include $2,568.46 transportation expense on industrial gas sold to Denver Pressed Brick Company, included in general system transmission costs. No special consideration need therefore be given to the service to such customer.

Volume of gas transmitted, M.C.F. 7,991,577
Average Volumetric Costs per M.C.F. trans. $.0265

COLORADO-WYOMING GAS COMPANY
SUMMARY OF COST OF DISTRIBUTION
THREE YEARS, 1937-1938-1939

(1)	Percent (2)	Cost (3)	Equally Per Customer (4)	Adjusted Book Cost of Plant (5)
1. Measuring Stations Operations	40.11	$21,850.76	$21,850.76	
2. " " Maintenance	2.69	1,466.30		$1,466.30
3. Proportion of General Expenses	27.21	14,820.27	13,894.00	926.27
4. Annual Accrual for Depreciation of Distribution Plant	8.26	4,501.05		4,501.05
5. Proportion of Annual Accrual for Depreciation of General Plant	0.14	75.96		75.96
6. Distribution Plant Property Taxes	3.84	2,092.52		2,092.52
7. Proportion of General and Intangible Plant Property Taxes	0.02	10.26		10.26
8. Payroll Taxes	1.48	803.90	753.66	50.24
9. Miscellaneous Taxes	0.33	180.02		180.02
10. Federal Income Tax on Distribution Plant	3.61	1,968.85		1,968.85
11. State of Colorado Income Taxes	0.36	198.73		198.73
12. Proportion of Federal Income Taxes on General and Intangible Plant	0.02	9.65		9.65
13. Proportion of State of Colorado Income Taxes on General and Intangible Plant	-	.97		.97
14. Return on Distribution Plant	11.87	6,462.68		6,462.68
15. Return on Proportion of General and Intangible Plant	.06	31.69		31.69
16. Total Cost of Distribution	100.00	$54,473.61	$36,498.42	$17,975.19

Note: General Expenses and Payroll Taxes allocated in proportion to direct expenses.

EXHIBIT 228

TABLE 13

EXHIBIT 242

COLORADO WYOMING GAS COMPANY — STATEMENT NO. 2

EXECUTIVE SALARIES, CLERICAL SALARIES, LEGAL EXPENSES, REGULATORY COMMISSION EXPENSE.

	Actual 1939	Actual 1940	Estimated 1941
EXECUTIVE SALARIES			
Vice President	$ 4205.00	$ 4405.00	$ 5400.00
Secretary	3113.00	3313.00	4800.00
Total	$ 7318.00	$ 7718.00	$10200.00
CLERICAL SALARIES			
Bookkeeping (Hurdle)	$ 2045.00	$ 2105.00	$ 2100.00
Stenographer (½ Time)	572.50	682.50	660.00
Extra Girl (Temporary)		134.50	300.00
Additional Employee (Now on payroll charged to Regulatory Commission Expense)			1800.00
Total	$ 2617.50	$ 2922.00	$ 4860.00
LEGAL EXPENSES			
Lee, Shaw and McCreery	$ 5000.00	$ 5000.00	$ 5000.00
W. O'Leary	100.00	100.00	100.00
Misc. Expense & Service Tax	1628.15	15.35	1400.00
Adjustment - 1939 Expense (Reclassified to Regulatory Commission Expense)		(R) 247.50	
Total	$ 6728.15	$ 4867.85	$ 6500.00
REGULATORY COMMISSION EXPENSE			
Legal Services:			
Lee, Shaw and McCreery	$ 7500.00	$ 7500.00	$ 5000.00
J. C. Pickett		2500.00	2000.00
Miscellaneous Expense		1263.88	600.00
Charges from Petroleum Advisers, Inc.			
Services	2807.31	10472.81	10000.00
Expense	1342.06	3848.29	2500.00
Direct Company Expense:			
Test Holes	1080.00		300.00
Field Inventory	851.00	1505.00	1000.00
Miscellaneous Printing, etc.	498.79	589.15	300.00
Witness Fees (Bosworth)		765.00	
Overtime (Clerical Salaries)		245.39	
Transcript of Testimony		4308.30	6000.00
Total	$14079.16	$32997.82	$27600.00

EXHIBIT 242

STATEMENT NO. 3

COLORADO WYOMING GAS COMPANY

BREAKDOWN OF GENERAL EXPENSES - ESTIMATED FUTURE

REVISED EXHIBIT NO. 116

	Actual 1939	Actual 1940	1941	1942	1943	1944	1945	1946	1947	1948	1949
Executive Salaries	$ 7312	$ 7718	$ 10200	$ 10200	$ 10200	$ 10200	$ 10200	$ 10200	$ 10200	$ 10200	$ 10200
Clerical Salaries	2618	2922	4860	6360	7020	7020	7020	7020	7020	7020	7020
Legal Expenses	6728	4868	6500	6500	6500	6500	6500	6500	6500	6500	6500
Traveling Expenses	1538	765	1200	1200	1200	1200	1200	1200	1200	1200	1200
General Incidental Expense	2476	3498	3050	3050	3050	3050	3050	3050	3050	3050	3050
Advisory Service Expense	3313	4339	3700	3800	3900	4000	4100	4200	4300	4400	4500
Insurance	386	344	375	375	375	375	375	375	375	375	375
Rent	1680	2130	2120	2120	2120	2120	2120	2120	2120	2120	2120
Injuries and Damages	1174	1376	1300	1350	1400	1400	1400	1400	1450	1450	1450
Welfare Expense	21	11	30	30	30	30	30	30	30	30	30
Regulatory Commission Expense	14079	32998	27600	2500	2500	2500	2500	2500	2500	2500	2500
Total General Expenses	$ 41331	$ 60969	$ 60935	$ 37485	$ 38295	$ 38395	$ 38495	$ 38595	$ 38745	$ 38845	$ 38945
AMORTIZING REGULATORY COMMISSION EXPENSE OVER 5-YEAR PERIOD											
Total General Expenses		$ 30067	$ 37385	$ 48269	$ 52419	$ 53233	$ 50517	$ 44015	$ 38595	$ 38745	$ 38845	$ 38945
BASIS OF AMORTIZING REGULATORY COMMISSION EXPENSE											
1939	$ 14079		$ 2815	$ 2815	$ 2815	$ 2815	$ 2819	$	$	$	$	$
1940	32998			6599	6599	6599	6599	6602				
1941	27600				5520	5520	5520	5520	5520			
1942	2500					2500	2500	2500	2500	2500	2500	2500
TOTAL			$ 2815	$ 9414	$ 14934	$ 17434	$ 17438	$ 14622	$ 8020	$ 2500	$ 2500	$ 2500

EXHIBIT 242

STATEMENT NO. 4

COLORADO WYOMING GAS COMPANY

BALANCE SHEET - AS OF DECEMBER 31, 1940

ASSETS AND OTHER DEBITS

UTILITY PLANT	
Gas Plant in Process of Reclassification	$ 1858462.11
1940 Additions to Gas Plant	41335.83
Total Utility Plant	$ 1899797.94
INVESTMENT AND FUND ACCOUNTS	
Investments in Associated Companies	$ 100335.29
CURRENT AND ACCRUED ASSETS	
Cash	$ 49345.02
Accounts Receivable	32346.71
Receivables from Associated Companies:	
Cheyenne Light, Fuel & Power Co.	24449.97
Public Service Co. of Colorado	46171.97
Material and Supplies	7050.28
Prepayments	1435.06
Total Current and Accrued Assets	$ 160799.01
Total Assets and Other Debits	$ 2160932.24

Note:

The following adjustments applicable to 1940, but actually entered on the books of the Company in January 1941, are reflected in this Balance Sheet:

	Dr.	Cr.
Undistributed Expenses		$ 3200.00
Prepaid Legal Expense (Reg. Com. Exp.)		10150.00
Accounts Payable		1048.25
Surplus:		
Regulatory Commission Exp.	$13720.40	
Other Expenses	677.85	
	$14398.25	$14398.25

EXHIBIT 242

STATEMENT NO. 4 (CONT)

COLORADO WYOMING GAS COMPANY

BALANCE SHEET - AS OF DECEMBER 31, 1940

LIABILITIES AND OTHER CREDITS

Common Capital Stock	$ 1501000.00
CURRENT AND ACCRUED LIABILITIES	
Accounts Payable:	
Colorado Interstate Gas Co.	$ 62056.21
Other	6109.59
Taxes Accrued:	
Federal Income	30598.69
Colorado State Income	2600.00
General	27840.05
Expenses Accrued:	
Audit Fee	600.00
Insurance	8.67
Total Current and Accrued Liabilities	$ 129813.21
DEFERRED CREDITS	
Customers Advances for Construction	$ 2982.14
RESERVES	
Reserve for Depreciation of Gas Plant	$ 512122.40
Contributions in Aid of Construction	$ 9193.65
Earned Surplus	$ 5820.66
Total Liabilities and Other Credits	$ 2160932.24

EXHIBIT 243

EXPLANATORY STATEMENT

WILLARD

STATEMENT
INTEREST DURING CONSTRUCTION
J. L. WILLARD

In Exhibit No. 199 submitted by Mr. Bob Vaught, an accountant for the Federal Power Commission, adjustments for interest during construction are recommended. Entries number 205 and 206 in such exhibit result in credit to Gas Plant and a debit to surplus of $8739.76. On cross examination, Mr. Vaught recognized and admitted an error of $1165.78 under the method of computation employed by him. Correction of this error reduces the net credit and debit as reflected in entries 205 and 206 of exhibit 199 from $8739.76 to $7573.98.

The calculations in entry No. 206 arbitrarily assume that a main line goes into full service, at the time service starts from a branch from that main line. The fallacy of this method can be pointed out by a hypothetical example. Assume a 20 inch line 200 miles in length was to be constructed, and a 4 inch lateral serving a small community at the half way point, was a part of the project. The theory used by Mr. Vaught would exclude interest during construction on the entire first 100 miles of 20" construction when the 4" line went into service. This obviously is harsh, inequitable and unfair.

The calculations in this exhibit eliminate from interest charges the proportionate part of the investment in the main 10" and 8" lines from Littleton to Fort Collins as service begins on various laterals, prior to the date of connection and initial service of the 10" and 8" lines, to the already existing facilities of the north system at Fort Collins.

Computations in the attached exhibit have been made for interest during construction on the main 10" line from Littleton to Boulder Junction and the main 8" line from Boulder Junction to Fort Collins to the date of service to the north system at Fort Collins, January 31, 1930.

EXHIBIT 243

EXPLANATORY STATEMENT

WILLARD

To the amounts computed for these lines has been added the additional amount of $7614.58 which was obtained from Exhibit 199. This amount consists of the total of all interest during construction charges in entry [illegible] of that exhibit with the exception of the computations on the 10 inch and 8 inch line from Littleton to Fort Collins.

The total interest during construction thus computed results in the total amount of $23,690.27. The actual book figure is $23,718.50. It is believed that the total actual book charges should be allowed and that entries number 205 and 206 of Exhibit 199 be disregarded.

EXHIBIT 243

STATEMENT NO. 1

COLORADO WYOMING GAS COMPANY

INTEREST DURING CONSTRUCTION

SUMMARY

Calculated:	
Littleton - Boulder Jct. - 10"	$ 9521.87
Boulder Jct. - Ft. Collins - 8"	6553.82
Other:	
Interest on all other construction allowed in Exhibit No. 199	7614.58
Total	$23690.27
Interest during construction as capitalized on books of the Company and included in Exhibit No. 111	$23718.50

EXHIBIT 243

STATEMENT NO. 2

COLORADO WYOMING GAS COMPANY

INTEREST DURING CONSTRUCTION

LITTLETON - BOULDER JUNCTION LINE

Interest on all construction charges to September 30, 1929 — $ 3679.23

Total charges to September 30, 1929 — $ 335557.05

Initial Service (For Interest Calculation)

				Plant Not in Service
Boulder	9/30/29	6.86%	$ 23019.21	$ 312537.84
Edgewater	10/31/29	1.20%	4026.68	308511.16
Great Western Sugar	11/30/29	10.10%	33891.26	274619.90
Arvada-Berthoud	12/15/29	.35%	1174.45	273445.45
Ft. Collins	1/31/30	81.49%	273445.45	
		100.00%	$335557.05	

Interest on Plant not in Service

From 9/30/29 to 10/31/29	- 1/2%	on	$ 312537.84	1562.69
From 10/31/29 to 11/30/29	- 1/2%	on	308511.16	1542.56
From 11/30/29 to 12/15/29	- 1/4%	on	274619.90	686.55
From 12/15/29 to 1/31/30	- 3/4%	on	273445.45	2050.84

Total Interest — $ 9521.87

EXHIBIT 243

STATEMENT NO. 3

COLORADO WYOMING GAS COMPANY

INTEREST DURING CONSTRUCTION

BOULDER JUNCTION - FT. COLLINS LINE

Interest on all construction charges to November 30, 1929 plus interest on charges during December 1929 and January 1930 to January 31, 1930	$ 3687.78

GREELEY - FT. COLLINS SECTION

Applicable charges to November 30, 1929 $116577.86	
Interest on above amount to January 31, 1930 - 2 Months 1%	1165.78

BOULDER - GREELEY SECTION

Applicable Charges to 11/30/29 - $193717.21

Initial Service (For Interest Calculation)			Plant Not in Service
Great Western Sugar	11/30/29-12.08%	$23401.04	$ 170316.17
Berthoud	12/15/29- .20%	387.43	169928.74
Ft. Collins	1/31/30-87.72%	169928.74	
	100.00%	$193717.21	

Interest on Plant Not in Service

From 11/30/29 to 12/15/29 - 1/4%	on	$ 170316.17	425.79
From 12/15/29 to 1/31/30 - 3/4%	on	169928.74	1274.47
Total Interest			$ 6553.82

EXHIBIT 244

EXPLANATORY STATEMENT

WILLARD

STATEMENT

J. L. WILLARD

In Entry number 1 of Exhibit 199, Mr. Vaught, accountant for the Federal Power Commission, credits Gas Plant and charges Surplus with an amount of $79,362.52.

This adjustment reflects the fact that Mr. Vaught did not consider the history of the construction, operation and expansion of the Colorado Wyoming Gas Company's present system. These elements were considered and controlled the management, at the time, in capitalizing the item in question.

The original facilities including all investment from Ft. Collins north to and including Cheyenne, Wyoming were constructed in 1925 and 1926, and were supplied with gas from the Wellington field north of Ft. Collins. In 1929 the supply from this field was rapidly diminishing and was known to be approaching exhaustion, and new construction was necessary from Littleton to Ft. Collins to take the place of such diminishing supply if the Ft. Collins-Cheyenne system was to be saved and continue useful. It was, of course, good judgment to install at the outset, a line of sufficient size and character to meet fully, the then requirements of such original system and facilities for utilization upon the complete exhaustion of the Wellington Field gas supply, rather than to construct smaller lines at much greater expense, sufficient to meet the requirements from year to year during the process of depletion. Such construction from Littleton to Ft. Collins was, at that time, projected, constructed and dedicated to the original system to the extent necessary to meet and carry the then existing requirements thereof.

The annual purchases of gas in M C F by the company during the years 1928 to 1932, inclusive, were as follows:

EXHIBIT 244

EXPLANATORY STATEMENT

WILLARD

	1928	1929	1930	1931	1932
Continental Oil Co.	2,254,599	1,718,642	1,275,030	453,955	163,078
Colorado Interstate Gas Co.	--	33,943	888,112	1,800,153	2,112,038
Wyer Goodstein	--	--	57,818	77,284	100,839

The attached exhibit is presented for the purpose of illustrating and applying the principal involved in such capitalization. The construction of the line as a 10" and 8" line resulted in an expenditure for facilities that could not be utilized until required by the progressive depletion of the Wellington field. The same construction, however, resulted in a capitalization on the books of the company, many thousands of dollars less than would have been necessary if facilities for immediate requirements from year to year only, had been constructed.

Based on the foregoing facts, and deliveries of the system on December 26, 1938, the investment in the main 10 inch and 8 inch lines from Littleton to Fort Collins in this exhibit, has been allocated proportionately to the original system and facilities of the company from Fort Collins to Cheyenne, Wyoming.

From the deliveries on that day it has been determined that the original facilities of the north system required approximately 63.6% of the investment in the 10" line and 84.9% of the investment in the 8" line.

The requirements of the original facilities of the north system for Texas gas on that day were 8818 M.c.f. at a pressure base of 12.9 lbs., although the daily maximum requirement of the north system in 1928, substantially exceeded the above amount.

The actual maximum daily deliveries of Texas gas to the original facilities have been recorded from February 1930 through December, 1932. As each successive new maximum daily delivery was made, that proportion of the required investment went into service in the ratio the actual deliveries bore

to the total ultimate requirement. Interest has been computed on the balance of investment in the non-utilized facilities during the several periods, through the year 1932. The result of the several calculations indicate total interest of $27,475.27.

It is my opinion that this is a minimum amount of interest to be assigned to the main 10" inch and 8 inch lines, in connection with such construction to provide essential substitute gas supply to the original Ft. Collins-Cheyenne system.

EXHIBIT 244

STATEMENT NO. 1

COLORADO WYOMING GAS COMPANY

INTEREST ON NON-UTILIZED FACILITIES TO PROVIDE ESSENTIAL SUBSTITUTE GAS SUPPLY TO ORIGINAL FT. COLLINS CHEYENNE SYSTEM.

PERIOD From	To	PEAK DEMANDS Mos.	Maximum to Date	During Period	Percent of Maximum	INVESTMENT Total	In Service	Subject To Interest	Total Interest
2/1/30	2/28/30	1	8818	4171	47.30	$ 548660.34	$ 259516.34	$289144.00	$ 1445.72
3/1/30	12/31/30	10	8818	4252	48.22	$ 548660.34	$ 264564.02	$284096.32	$14204.82
1/1/31	12/31/32	24	8818	7234	82.04	$ 548660.34	$ 450120.94	$ 98539.40	$11824.73
TOTAL									$27475.27

EXHIBIT 244

STATEMENT NO. 2

COLORADO WYOMING GAS COMPANY

BASIS FOR DETERMINATION OF INVESTMENT ASSIGNABLE TO THE ORIGINAL FT. COLLINS -CHEYENNE SYSTEM WAS CALCULATED BY RESULTS DETERMINED FROM THE SYSTEM PEAK ON DECEMBER 26, 1938

Littleton-Boulder Junction 10" Line		
Total Cost	$ 366949.10	
Assigned to Original Ft. Collins-Cheyenne System 63.63476%		$ 233507.18
Boulder Junction-Ft. Collins 8" Line		
Total Cost	$ 371031.77	
Assigned to Original Ft. Collins-Cheyenne System 84.93967%		$ 315153.16
Total to Ft. Collins-Cheyenne System		$ 548660.34

EXHIBIT 244

STATEMENT NO. 3

COLORADO WYOMING GAS COMPANY

PEAK DELIVERIES NORTH THROUGH DIVISION METER AT FT. COLLINS FOR EACH BILLING PERIOD FROM FEBRUARY 1930 THROUGH DECEMBER 1932 AT 12.9# PRESSURE BASE

MONTH	YEAR 1930	1931	1932
January		7234	4468
February	4171	3119	4487
March	4252	3998	5101
April	3660	5506	6271
May	2614	5764	6718
June	1555	4566	5436
July	408	3992	3264
August	816	4732	4231
September	1911	3970	4929
October	2522	2269	4929
November	2857	4730	3120
December	2980	4137	4967

EXHIBIT 245

EXPLANATORY STATEMENT

WILLARD

STATEMENT

J. L. WILLARD

This exhibit contains revised data previously submitted in exhibits No. 111, 115, 117 and 118.

The tabulations herein have been computed in the identical manner and method as in the original exhibits. They are presented only for the purpose of reflecting the effect of certain eliminations from the original figures and are not to be construed as a recognition that the eliminations are justified. Net additions to investment between September 30, 1940 and December 31, 1940 are also included.

The eliminations reflected in revised Statements No. 1 and No. 2 of Exhibit 111 are as follows:

(1) Engineering charge of 5% in the amount of $82,792.57 has been deducted from the various accounts affected.

(2) Account 1021 has been credited with $51,887.25 which is the difference between the total interest capitalized on non-utilized facilities $79,362.52 and the amount of interest calculated in exhibit No. 244, towit: $27,475.27.

(3) Account 1013 has been credited with $2844.90 "cash discount" as described in entry number 204 of exhibit number 199.

(4) Account 1014 has been charged with an amount of $3,278.54. This amount is the net result of entries 213-214-215 and 216 of exhibit number 199.

(5) Account 1014 has been credited $111.24. This amount is reflected as a part of entry 218 of exhibit 199.

(6) Account 1014 has been credited $1007.31. This amount is described in entry number 219 of exhibit 199.

The revisions to exhibits 115, 117 and 118 reflect a redistribution of total investment as revised in exhibit 111, to plant applicable to "Total Sales for Resale" and "Sales for Resale at Cheyenne."

There is reflected as a credit to "Other General Expenses", in the earnings statement of the total company operations, an amount of $1656.47 for the year of 1939. This credit is the sum of entries #100, and 101 of exhibit number 202. Similar credits have been reflected for the amounts of comparable expense in the years 1940 through 1945. The proportionate part of all revisions to total investment and expense have been carried through in the allocations to "Total Sales for Resale" and "Sales for Resale at Cheyenne."

EXHIBIT 245

STATEMENT NO. 1

COMMENT ON EXHIBIT 227

RETURN AND INVESTMENT ASSIGNED AND CHARGEABLE TO DIRECT INDUSTRIAL CUSTOMERS BY EXHIBIT 227

	RETURN AT 6%	EQUIVALENT INVESTMENT
Transmission - Volumetric Costs	$ 18,025.89	$ 300,431.50
Transmission - Capacity Costs	15,112.28	251,871.31
Cost of Distribution	584.48	9,741.33
Totals	$ 33,722.65	$ 562,044.14

Note: "Equivalent Investment" above stated means the total plant as adopted in Exhibit 227 from Exhibit 199.

The percentage of total plant is 43.58%.

EXHIBIT 245

STATEMENT NO. 2

COLORADO WYOMING GAS COMPANY

PRESENT VALUE

REVISED STATEMENT NO. 1, EXHIBIT NO. 111

Plant and Investment (December 31, 1940)	$ 1627204.79
Arapahoe Station:	
Additions, 1941	37476.60
Working Capital	45490.00
Total	$ 1710171.39

EXHIBIT 245

STATEMENT NO. 3

COLORADO WYOMING GAS COMPANY

DECEMBER 31, 1940

REVISED STATEMENT NO. 2, EXHIBIT NO. 111

SUMMARY

Account		Plant and Investment.	P & I Less Depreciation
1000.	Lands in Fee	$ 6493.97	$ 6493.97
1003.	Buildings and Grounds	2742.10	2742.10
1004.	Measuring Stations	48417.12	45512.10
1005.	Regulators	611.59	538.20
1006.	Meters	5971.90	5255.27
1008.	Office Equipment	3285.89	2793.01
1009.	Automobiles and Trucks	5014.36	2918.36
1011.	Tools	1294.29	647.15
1013.	Main Lines	1416647.25	1309805.55
1014.	Compressor Stations	228394.50	209993.05
1018.	Telephone Lines	474.99	451.24
1019.	Organization	3472.28	3472.28
1021.	General Construction Expenditures	39630.06	36582.51
	Total	$1762450.30	$1627204.79

EXHIBIT 245

STATEMENT NO. 4

COLORADO WYOMING GAS COMPANY

EARNING STATEMENT - ESTIMATED FUTURE

REVISED EXHIBIT NO. 115

	Actual 1939	Actual 1940	1941	1942	1943	1944	1945	1946	1947	1948	1949
s Sales - M. C. F.											
Sales for Resale	1706411	1864636	1907000	1970800	2027600	2088500	2141400	2190 00	2235800	2274100	2312700
Sales to Public Authorities	36313	37773	41600	42500	42500	42500	42500	425	42500	42500	42500
Sales - Industrial and Main Line	1589722	1307502	1410600	1408000	1407000	1407000	1406000	1403000	1403000	1403000	1403000
Total Gas Sales	3332446	3209911	3359200	3421300	3477100	3538000	3589900	3635800	3681300	3719600	3758200
OSS EARNINGS											
Sales for Resale	$ 579578	$ 640993	$ 655116	$ 679622	$ 700342	$ 721972	$ 740866	$ 759032	$ 776582	$ 789882	$ 803872
Sales to Public Authorities	12816	13349	14815	15175	15175	15175	15175	15175	15175	15175	15175
Sales-Industrial and Main Line	236545	193725	205124	204593	204418	204418	204243	203718	203718	203718	203718
Total Gross Revenue	$ 828939	$ 848067	$ 875055	$ 899390	$ 919935	$ 941565	$ 960284	$ 977925	$ 995475	$1008775	$1022765
Bad Debts, etc.	442	83									
Total Gross Earnings	$ 828497	$ 848150	$ 875055	$ 899390	$ 919935	$ 941565	$ 960284	$ 977925	$ 995475	$1008775	$1022765
RATION AND MAINTENANCE											
Purchased Gas Expense	$ 503506	$ 533526	$ 557158	$ 572685	$ 588989	$ 611448	$ 650774	$ 666512	$ 677612	$ 687312	$ 696387
Transmission Operation	35166	32271	43770	47770	50490	54170	55170	56170	57145	57645	58145
Transmission Maintenance	5060	9207	16000	19950	22250	24450	25650	26250	26600	26800	27000
General Expenses:											
Taxes - General	32157	33802	36730	38380	40035	41685	43340	45010	46680	48350	50030
Other	41331	60969	60935	37485	38295	38395	38495	38595	38745	38845	38945
Total Expenses	$ 617220	$ 669775	$ 714593	$ 716270	$ 740059	$ 770148	$ 813429	$ 832537	$ 846782	$ 858952	$ 870507
Less Gas Used by Company	4336	3615	4000	4500	4750	4900	5000	5100	5200	5300	5400
Total Operation and Maintenance	$ 612884	$ 666160	$ 710593	$ 711770	$ 735309	$ 765248	$ 808429	$ 827437	$ 841582	$ 853652	$ 865107
Net Earnings from Operation	$ 215613	$ 181990	$ 164462	$ 187620	$ 184626	$ 176317	$ 151855	$ 150488	$ 153893	$ 155123	$ 157658
Federal Income Tax	24332	27251	22677	28053	27334	25340	19469	19141	19958	20254	20862
Net to Reserves and Return	$ 191281	$ 154739	$ 141785	$ 159567	$ 157292	$ 150977	$ 132386	$ 131347	$ 133935	$ 134869	$ 136796
RTIZING REGULATORY COMMISSION EXPENSE OVER 5-YEAR PERIOD											
Net to Reserves and Return	$ 202545	$ 178323	$ 154451	$ 144633	$ 142354	$ 138855	$ 126866	$ 131347	$ 133935	$ 134869	$ 136796

NOTE: The projected earnings as shown above do not reflect, beyond 1941, the effect of additional compressor station facilities and increased transmission operation and maintenance expense which would be required to deliver the estimated future volumes of gas.

EXHIBIT 245

STATEMENT NO. 5

COLORADO WYOMING GAS COMPANY

CALCULATED TOTAL INVESTMENT

APPLICABLE TO TOTAL SALES FOR RESALE

REVISED STATEMENT NO. 1, EXHIBIT NO. 117

	Plant and Investment	
	Total	Depreciated
Main Lines	$ 1057233	$ 980066
Compressor Stations	235054	216598
Branch Lines and All Other Miscellaneous Property	470163	430541
Sub Total	$ 1762450	$ 1627205
Compressor Station Additions	37477	37477
Working Capital	45490	45490
Sub Total	$ 82967	$ 82967
Total	$ 1845417	$ 1710172
Investment Used by Industrial and Public Authority Customers	$ 98222	$ 82903
Investment Used for Total Sales for Resale	$ 1747195	$ 1627269

EXHIBIT 245

STATEMENT NO. 6

COLORADO WYOMING GAS COMPANY

EARNING STATEMENT - TOTAL SALES FOR RESALE - ESTIMATED FUTURE

REVISED EXHIBIT NO. 117

	Actual 1939	Actual 1940	1941	1942	1943	1944	1945
GAS SALES - M. C. F.							
Sales for Resale							
Domestic	1282056	1480220	1482200	1546000	1602800	1663700	1716600
Industrial	424355	384416	424800	424800	424800	424800	424800
Total Gas Sales	1706411	1864636	1907000	1970800	2027600	2088500	2141400
GROSS EARNINGS							
Sales For Resale							
Domestic	$ 488264	$ 554671	$ 563876	$ 588382	$ 609102	$ 630732	$ 649626
Industrial	91314	86322	91240	91240	91240	91240	91240
Total Gross Earnings	$ 579578	$ 640993	$ 655116	$ 679622	$ 700342	$ 721972	$ 740866
OPERATION AND MAINTENANCE							
Purchased Gas Expense	$ 330410	$ 388690	$ 401830	$ 417450	$ 430800	$ 455890	$ 495170
Transmission Operation	29310	27480	38320	42150	44810	48470	49840
Transmission Maintenance	3770	8050	13950	17570	19570	21550	22470
General Expenses:							
Taxes - General	29530	31704	32643	35076	36661	38054	39151
Other	41331	60969	60935	37485	38295	38395	38495
Total Expenses	$ 434351	$ 516893	$ 547678	$ 549731	$ 570136	$ 602359	$ 645126
Less Gas Used by Company	2428	2241	2372	2705	2888	3018	3495
Total Operation and Maintenance	$ 431923	$ 514652	$ 545306	$ 547026	$ 567248	$ 599341	$ 641631
Net Earnings from Operation	$ 147655	$ 126341	$ 109810	$ 132596	$ 133094	$ 122631	$ 99235
Federal Income Tax	13364	14343	10036	15275	15396	12884	7268
Net to Reserves and Return	$ 134291	$ 111998	$ 99784	$ 117321	$ 117698	$ 109747	$ 91967
AMORTIZING REGULATORY COMMISSION EXPENSE OVER 5-YEAR PERIOD							
Net Reserves and Return	$ 145555	$ 135582	$ 112450	$ 102387	$ 102760	$ 97625	$ 86447

Note: The projected earnings as shown above do not reflect, beyond 1941, the effect of additional compressor station facilities and increased transmission operation and maintenance expense, which would be required to deliver the estimated future volumes of gas.

EXHIBIT 245

STATEMENT NO. 7

COLORADO WYOMING GAS COMPANY

CALCULATED MAIN LINE INVESTMENT

APPLICABLE TO CHEYENNE

REVISED STATEMENT NO. 2, EXHIBIT NO. 118

	Plant & Investment		Plant & Investment Less Depreciation	
	Total	Applicable to Cheyenne	Total	Applicable to Cheyenne
MAIN LINES:				
Arapahoe to Golden Branch	$ 166993	$ 39918	$ 158436	$ 37873
Golden Branch to Boulder Branch	199956	58626	189710	55622
Boulder Branch to Brighton Branch	21998	7374	20003	6705
Brighton Branch to Greeley Branch	209655	73969	190443	67261
Greeley Branch to Fort Collins	139379	65457	126740	59521
Fort Collins to Cement Branch	37402	35384	34504	32642
Cement Branch to Wellington Station	52689	49845	48606	45963
Wellington Station to Cheyenne	190729	183112	175950	168923
Sub Total - Main Lines	$1018801	$ 513685	$ 944592	$ 474530
General Construction Expenditures	$ 39142	$ 17221	$ 36132	$ 15897
Compressor Stations	234344	105546	215943	95718
Compressor Stations in Course of Construction	37477	10988	37477	10988
Measuring Stations	48417	2217	45512	2084
Telephone Lines	475	454	451	431
Office Equipment	3286	1566	2793	1331
Automobiles	5014	2390	2918	1391
Tools	1294	617	647	309
Organization Expenditures	3472	1655	3472	1655
Miscellaneous Branch Lines				
Meters, Regulators and Other Non-Applicable Investment	408205		374744	
Working Capital	45490	16657	45490	16657
Sub Total - Other	$ 826616	$ 159811	$ 765579	$ 146461
Grand Total	$1845417	$ 672996	$1710171	$ 620991

EXHIBIT 245

STATEMENT NO. 8

COLORADO WYOMING GAS COMPANY

EARNING STATEMENT - SALES FOR RESALE AT CHEYENNE - ESTIMATED FUTURE

REVISED EXHIBIT NO. 118

	Actual 1939	Actual 1940	1941	1942	1943	1944	1945
GAS SALES - M. C. F.							
Sales for Resale							
Domestic	439204	487860	494200	516900	537000	558300	578300
Industrial	54854	53774	55000	55000	55000	55000	55000
Total Gas Sales	494058	541634	549200	571900	592000	613300	633300
GROSS EARNINGS							
Sales for Resale							
Domestic	$ 166336	$ 184017	$ 185550	$ 194300	$ 201600	$ 208800	$ 216200
Industrial	15816	15882	15950	15950	15950	15950	15950
Total Gross Earnings	$ 182152	$ 199899	$ 201500	$ 210250	$ 217550	$ 224750	$ 232150
OPERATION AND MAINTENANCE							
Purchased Gas Expense	$ 99480	$ 117230	$ 119170	$ 124570	$ 129230	$ 138760	$ 153010
Transmission Operation	8840	9440	11340	12410	13210	14240	14740
Transmission Maintenance	1770	4200	7040	8880	9900	10920	11350
General Expenses:							
Taxes - General	10750	11710	12310	12880	13480	14080	14680
Other	11990	17710	17556	10870	11180	11290	11400
Total Gas Expenses	$ 132830	$ 160290	$ 167410	$ 169610	$ 177000	$ 189290	$ 205180
Less Gas Used by Company	1231	1153	956	1094	1173	1225	1280
Total Operation and Maintenance	$ 131599	$ 159137	$ 166454	$ 168516	$ 175827	$ 188065	$ 203900
Net Earnings from Operation	$ 50553	$ 40762	$ 35046	$ 41734	$ 41723	$ 36685	$ 28250
Federal Income Tax	4163	3700	2275	3830	3828	2619	594
Net to Reserves and Return	$ 46390	$ 37062	$ 32771	$ 37904	$ 37895	$ 34066	$ 27656
AMORTIZING REGULATORY COMMISSION EXPENSE OVER 5-YEAR PERIOD							
Net to Reserves and Return	$ 49657	$ 43915	$ 36397	$ 33581	$ 33569	$ 30558	$ 26067

NOTE: The projected earnings as shown above do not reflect, beyond 1941, the effect of additional compressor station facilities and increased transmission operation and maintenance expense, which would be required to deliver the estimated future volumes of gas.

EXHIBIT 245A

STATEMENT NO. 1

COLORADO WYOMING GAS COMPANY

RETURN AND EQUIVALENT INVESTMENT ASSIGNED
TO DIRECT INDUSTRIAL CUSTOMERS IN EXHIBIT NO. 227

Transmission - Volumetric Costs		
Total Volumetric Costs - Table 6 - Line 21 - Col. 4		$70,599.44
Distribution of Volumetric Costs - Table 1 - Col. 6		
To Direct Industrial Customers	$33,978.82	48.13%
To All Other Customers	36,620.62	51.87%
Total	$70,599.44	100.00%
Return on Transmission Plant Assigned To Volumetric Costs - Table 6 - Line 18 - Col. 4		$37,452.50
Return Allocated to Direct Industrial Customers 48.13% of $37,452.50		$18,025.89
Investment Allocated to Direct Industrial Customers Return of $18,025.89 at 6% equivalent to Investment of		$300,431.50
Transmission - Capacity Costs		
Total Capacity Costs - Table 6 - Line 21 - Col. 5		$149,920.91
Distribution of Capacity Costs		
To Domestic and Commercial Customers: Table 1 - Line 40 - Col. 7	$75,201.83	50.161%
To All Industrial Customers Table 1 - Line 40 - Col. 8	74,719.08	49.839%
Total	$149,920.91	100.000%
Return on Transmission Plant Assigned To Capacity Costs - Table 6 - Line 18 - Col. 5		$37,452.51
Proportion of Return on General and Intangible Plant - Table 6 - Line 19 - Col. 5		369.85
Total Return Assigned to Capacity Costs		$37,822.36
Return Allocated to All Industrial Customers 49.839% of $37,822.36		$18,850.29
Distribution of Capacity Costs to Industrial Customers		
To Direct Industrial Customers Table 1 - Col. 8	$59,898.94	80.17%
To Indirect Industrial Customers Table 1 - Col. 8	14,820.14	19.83%
Total	$74,719.08	100.00%

EXHIBIT 245A

STATEMENT NO. 1 (CONT)

Transmission Capacity Costs (Cont'd)		
Return Allocated to Direct Industrial Customers		
80.17% of $18,850.29		$15,112.28
Investment Allocated to Direct Industrial Customers		
Return of $15,112.28 at 6% equivalent to Investment of		$251,871.33
Cost of Distribution		
Portion of Cost of Distribution Allocated on Basis of Adjusted Book Cost of Plant - Table 7 - Line 17 - Col. 5		$6,623.82
Allocation of Above Amount of Cost of Distribution		
To Direct Industrial Customers - Table 7 (Cont'd) - Col. 3	$1,840.75	27.79%
To All Other Customers - Table 7 (Cont'd)-Col. 3	4,783.07	72.21%
Total	$6,623.82	100.00%
Return on Distribution Plant - Table 7 - Line 14 - Col. 5	$2,092.93	
Proportion of Return of General and Intangible Plant - Table 7 - Line 15 - Col. 5	10.26	
Total Return	$2,103.19	
Return Allocated to Direct Industrial Customers		
27.79% of $2,103.19	$ 584.48	
Investment Allocated to Direct Industrial Customers		
Return of $584.48 at 6% equivalent to Investment of	$9,741.33	

	RETURN AT 6%	EQUIVALENT INVESTMENT
Transmission - Volumetric Costs	$18,025.89	$300,431.50
Transmission - Capacity Costs	15,112.28	251,871.31
Cost of Distribution	584.48	9,741.33
Totals	$33,722.65	$562,044.14

EXHIBIT 246

STATEMENT NO. 1

COLORADO WYOMING GAS COMPANY

TOTAL CUSTOMERS SERVED - ALL SALES

	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940
DISTRIBUTION CO'S. FOR RESALE																
Cheyenne Lt., P. & P. Co.		1824	2193	2477	2693	2839	2839	2839	2857	2981	3371	3686	3979	4238	4475	4777
Public Service Co. of Colo.																
Fort Collins District	2246	2300	2346	2460	2516	2517	2443	2254	2192	2198	2708	2892	3027	3135	3238	3266
Berthoud District					17	217	430	502	536	589						
Boulder District					2161	2211	2242	2148	2087	2280	2534	2703	2820	2986	3078	3324
Brighton & Fort Lupton							155	171	248	233	280	335	380	410	440	473
Denver Fringe District					62	350	818	884	848	1018	1133	1263	1513	1659	1894	2193
Greeley Gas and Fuel Co.						2100	2103	1841	1856	1958	2055	2121	2225	2230	2355	2347
Highway Gas Company									15	15	16	16	22	25	25	24
Total	2246	4124	4539	4937	7449	10234	11030	10639	10639	11272	12097	13016	13966	14683	15505	16404
PUBLIC AUTHORITIES																
Fort Logan						25	25	59	63	69	69	69	71	72	72	72
Fort Warren						78	78	135	160	193	193	193	174	189	189	189
Denver Board Water Comm.												1	1	1	1	1
Federal Correctional Institution																3
Total						103	103	194	223	262	262	263	246	262	262	265
MISCELLANEOUS MAIN LINE	1	10	12	15	22	38	38	38	24	26	27	30	30	30	15	
INDUSTRIAL			2	2	3	4	4	4	4	5	5	8	9	9	10	9
TOTAL ALL CUSTOMERS	2247	4134	4553	4954	7474	10379	11175	10875	10890	11565	12391	13317	14251	14984	15792	16678

NOTE: During the year 1935 the Berthoud District was divided between the Boulder and Fort Collins District.

EXHIBIT 246

STATEMENT NO

COLORADO WYOMING GAS COMPANY

M. C. F. GAS SALES - CONTRACT PRESSURE BASE

	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940
SALES TO DISTRIBUTION CO'S. FOR RESALE																
Cheyenne Lt., P. & P. Co.		52,095	189,523	290,053	382,283	450,117	461,412	453,083	385,091	331,151	401,957	437,449	477,174	465,894	494,258	541,63
Public Service Co. of Colo.																
Fort Collins District	2,451	155,352	340,213	453,926	496,197	477,905	437,417	399,141	323,922	281,093	356,141	404,881	447,090	440,384	465,744	472,66
Berthoud District						12,204	35,475	46,850	44,082	40,875						
Boulder District					21,490	97,891	107,448	117,108	103,899	100,428	136,206	165,701	197,004	207,546	221,951	253,77
Brighton & Fort Lupton							3,614	10,562	12,094	15,116	20,730	26,365	32,639	34,909	38,227	45,99
Denver Fringe District					832	29,193	153,543	207,523	203,563	213,380	241,393	265,961	300,458	312,414	330,250	354,29
Greeley Gas and Fuel Co.						24,557	114,952	131,635	91,645	84,803	114,091	140,826	150,513	158,476	170,847	188,23
Highway Gas Co.									2,180	5,450	5,541	5,240	9,446	8,619	5,334	8,03
Total Sales for Resale	2,451	207,447	529,736	743,979	900,802	1091,867	1313,861	1365,902	1166,476	1072,296	1276,059	1446,423	1614,524	1628,282	1706,911	1864,63
SALES TO PUBLIC AUTHORITIES																
Fort Logan						815	2,128	2,811	4,217	4,885	6,537	7,099	7,811	8,770	8,776	8,03
Fort Warren						1,923	5,597	13,809	16,610	17,449	19,358	17,947	17,249	18,821	18,527	19,43
Denver Board of Water Comm.												3,109	10,298	9,991	9,010	9,192
Federal Correctional Institution																1,110
Total Sales to Public Authorities						2,738	10,725	16,620	20,827	22,334	25,895	28,155	35,358	37,582	36,313	37,77
MISCELLANEOUS MAIN LINE SALES	2,647	54,935	33,762	8,900	9,449	23,614	11,858	8,881	6,984	5,273	20,541	8,695	7,622	11,633	4,804	
INDUSTRIAL SALES																
Thomas Bate & Sons															61	389
Belmont Generating Plant															31,056	
Nevada Petroleum Co.												61,808	41,259			
Ft. Collins Producing Corp.												51,830	7,438	3,024	4,575	8,901
Golden Fire Brick Co.						34,584	90,805	27,697	16,891	26,761	49,741	73,269	77,880	72,185	66,821	45,174
Great Western Sugar Co.					10,932	364,080	416,557	488,421	478,895	431,985	320,067	225,389	323,636	287,051	356,506	850,205
Ideal Portland Cement Co.			40,633	1298,567	696,891	658,590	503,548	499,544	577	558,607	659,475	916,017	961,897	706,144	1015,502	894,048
Kaiser-Empson										4,147	28,027	32,185	33,127	34,732	38,570	42,167
Denver Pressed Brick Co.													10,221	62,904	52,597	50,430
Adolph Coors Co.												2,724	10,489	9,931	18,677	15,294
Producer's Canning Co.			606	511	1,166	961	519	460	490	660	980	23	750	1,037	111	886
Total Industrial Sales			31,219	1299,078	708,989	1058,215	1011,429	1016,122	496,853	1022,160	1058,290	1361,295	1466,671	1177,008	1585,918	1907,508
TOTAL ALL SALES - M. C. F.	5,098	262,382	604,737	2051,957	1619,240	2176,434	2347,873	2407,525	1691,140	2122,023	2380,785	2846,468	3124,181	2854,465	3332,946	3809,911

NOTE: During the year 1935 the Berthoud District was divided between the Boulder and Fort Collins District.

Schedule No. 1
23252
EXHIBIT 247

Colorado-Wyoming Gas Company

ESTIMATED VOLUME OF GAS SALES FOR THE YEAR 1941

Line	Description	Gas Sales MCF *
	(1)	(2)
	Direct Industrial Sales	
1	Adolph Coors Company	14,000
2	Golden Fire Brick Company	46,000
3	Kumer-Empson Company	40,000
4	Great Western Sugar Company	220,000
5	Denver Pressed Brick Company	45,000
6	Colorado Portland Cement Company	968,000
7	Producers Canning Company	700
8	Fort Collins Producing Corporation	6,000
9	Public Service Company of Colorado - Valmont	-
10	Total Direct Industrial Sales	1,341,700
	Sales to Public Authorities	
11	Board of Water Commissioners of Denver	8,000
12	Fort Logan	8,000
13	Fort Warren	18,000
14	Federal Correctional Institution	2,000
15	Total Sales to Public Authorities	36,000
16	Total Direct Sales to Ultimate Consumers	1,377,700
	Sales to Distribution Companies	
	Greeley Gas and Fuel Company	
17	Domestic Gas	160,000
18	Space-heating Allowance	97,000
19	Industrial Gas	17,000
20	Total	177,000
	Cheyenne Light, Fuel and Power Company	
21	Domestic Gas	425,000
22	Space-heating Allowance	220,000
23	Industrial Gas	45,000
24	Total	670,000
	Public Service Company of Colorado	
25	Domestic Gas	730,000
26	Space-heating Allowance	560,000
27	Industrial Gas	233,000
28	Total	963,000
29	Highway Gas Company	7,000
30	Total Sales to Distribution Companies	1,637,000
31	Total Gas Sales	3,014,700

* All MCF figures are on a uniform pressure base of 14.65 pounds per square inch absolute.

Schedule No. 2

28233

EXHIBIT 247

Colorado-Wyoming Gas Company

ESTIMATED VOLUME OF GAS PURCHASED FOR THE YEAR 1941

	MCF *
Total Gas Sales	3,014,700
Company Use	51,000
Lost and Unaccounted For	80,000
Total Gas Purchased	3,095,700
Purchased from Kir-well Oil Company	80,000
Purchased from Colorado Interstate Gas Company	
At Domestic Rate	1,398,000
At Industrial Rate	1,647,700
Total	3,045,700
Total Gas Purchased	3,095,700

* All MCF figures are on a uniform pressure base of 14.65 pounds per square inch absolute.

EXHIBIT 247
Schedule No. 5

2325

Colorado-Wyoming Gas Company

ESTIMATED OPERATING EXPENSES FOR THE YEAR 1941
(Excluding Purchased Gas Expense and Regulatory Commission Expenses)

Line	Description	Amount
	Transmission and Distribution Expenses - Operation	
1	Supervision and Engineering Labor	$ 5,000
2	Supervision and Engineering Supplies and Expenses	1,000
3	Pumping Station Labor	18,500
4	Pumping Station Supplies and Expenses	5,000
5	Measuring Station Labor	5,000
6	Measuring Station Supplies and Expenses	2,000
7	Transmission Mains Labor	2,500
8	Transmission Mains Supplies and Expenses	500
9	Total Trans. and Dist. Expenses - Operation	$39,500
	Transmission and Distribution Expenses - Maintenance	
10	Supervision and Engineering Labor	$ 1,670
11	Supervision and Engineering Supplies and Expenses	250
12	Maintenance of Pumping Station Structures	700
13	Maintenance of Pumping Station Equipment	2,250
14	Maintenance of Measuring Station Structures and Equipment	400
15	Maintenance of Transmission Mains	8,500
16	Total Trans. and Dist. Expenses - Maintenance	$13,770
	Transmission and Distribution Expenses - Miscellaneous	
17	Transmission of Gas by Others	$1,053
18	Rents	175
19	Total Trans. and Dist. Expenses - Miscellaneous	$1,228
	Sales Promotion Expenses	
20	Advertising	$ 200
	Administrative and General Expenses	
21	Salaries of General Officers and Executives	$ 7,800
22	Other General Office Salaries	4,900
23	Expenses of General Officers and Employees	1,800
24	General Office Supplies and Expenses	600
25	Management and Supervision Fees and Expenses	3,200
26	Special Services	600
27	Special Legal Services	5,660
28	Insurance	575
29	Injuries and Damages	1,400
30	Employees' Welfare Expenses	25
31	Miscellaneous General Expenses	1,600
32	Maintenance of General Office Furniture and Equipment	50
33	Rents	2,100
34	Total Administrative and General Expenses	$30,960(1)
35	Gas Used by Company - Credit	$ 4,397(2)
36	Total Operating Expenses, Excluding Purchased Gas Expense and Regulatory Commission Expenses	$79,231

(1) No estimate included for regulatory commission expenses.
(2) Cost of gas used by the company computed at present rate of 12.5¢ per MCF at 12.9 pounds per square inch absolute.

23255

Schedule No. 6

EXHIBIT 247

Colorado-Wyoming Gas Company

ESTIMATED TAXES, EXCLUDING INCOME TAXES, FOR THE YEAR 1941

Line	Description	Amount
1	Occupation Tax - City of Fort Collins	$ 350
2	Automobile Ownership Tax	50
3	Corporation License Tax and Filing Fee - Colorado	150
4	Federal Old Age Benefit Tax	800
5	Unemployment Compensation Tax	1,800
6	Federal Capital Stock Tax	1,525
7	State and County Property Taxes	27,000
8	Sales and Service Taxes - Colorado	350
9	Total Taxes, Excluding Income Taxes	$31,025

EXHIBIT 248

EXPLANATORY STATEMENT

WILLARD

D

WRITTEN STATEMENT

J. L. Willard

This exhibit shows the net return in amount, and percentage of the yearly average present value of the property. Classifications are "All Sales", "Total Sales for Resale", and "Sales for Resale at Cheyenne", for each year from 1940 to 1945, both inclusive.

The present values have been obtained from Revised Exhibits Nos. 111, 117 and 118, to which have been added allowances for Going Concern Value.

Net to Reserves and Return has been obtained from Revised Exhibits Nos. 115, 117 and 118.

Annual Depreciation Reserve has been determined by applying percentages obtained from Exhibit No. 202 to the depreciable property in similar classifications.

Net Return in the two statements of this exhibit reflects amounts for Regulatory Commission Expense, in one instance in the year actually incurred, and in the other instance by amortizing the annual amount of this expense, beginning with the year 1939, over 5-year periods.

EXHIBIT 248

STATEMENT NO. 1

COLORADO WYOMING GAS COMPANY

NET RETURN - REFLECTING REVISED EXHIBITS NOS. 111, 115, 117, 118 AND INCLUDING GOING CONCERN VALUE

(REGULATORY COMMISSION EXPENSE AS INCURRED)

	1940	1941	1942	1943	1944	1945
ALL SALES						
Present Value:						
Beginning of Year	$ 1808448	$ 1847694	$ 1885171	$ 1885171	$ 1885171	$ 1885171
End of Year	1847694	1885171	1885171	1885171	1885171	1885171
Average for Year	$ 1828071	$ 1866433	$ 1885171	$ 1885171	$ 1885171	$ 1885171
Net to Reserves and Return	$ 154739	$ 141785	$ 159567	$ 157292	$ 150977	$ 132386
Depreciation Reserve	38820	39905	40917	40917	40917	40917
Net Return	$ 115919	$ 101880	$ 118650	$ 116375	$ 110060	$ 91469
Net Return - %	6.34	5.46	6.29	6.17	5.84	4.85
TOTAL SALES FOR RESALE						
Present Value:						
Beginning of Year	$ 1718719	$ 1755841	$ 1792959	$ 1792959	$ 1792959	$ 1792959
End of Year	1755841	1792959	1792959	1792959	1792959	1792959
Average for Year	$ 1737280	$ 1774400	$ 1792959	$ 1792959	$ 1792959	$ 1792959
Net to Reserves and Return	$ 111998	$ 99784	$ 117321	$ 117698	$ 109747	$ 91967
Depreciation Reserve	36693	37507	38510	38510	38510	38510
Net Return	$ 75305	$ 62277	$ 78811	$ 79188	$ 71237	$ 53457
Net Return - %	4.33	3.51	4.40	4.42	3.97	2.98
SALES FOR RESALE AT CHEYENNE						
Present Value:						
Beginning of Year	$ 659445	$ 673816	$ 684804	$ 684804	$ 684804	$ 684804
End of Year	673816	684804	684804	684804	684804	684804
Average for Year	$ 666631	$ 679310	$ 684804	$ 684804	$ 684804	$ 684804
Net to Reserves and Return	$ 37062	$ 32771	$ 37904	$ 37895	$ 34066	$ 27656
Depreciation Reserve	13582	13883	14179	14179	14179	14179
Net Return	$ 23480	$ 18888	$ 23725	$ 23716	$ 19887	$ 13477
Net Return - %	3.52	2.78	3.46	3.46	2.90	1.97

EXHIBIT 248

STATEMENT NO. 2

COLORADO WYOMING GAS COMPANY

NET RETURN - REFLECTING REVISED EXHIBITS NOS. 111, 115, 117, 118 AND INCLUDING GOING CONCERN VALUE

(AMORTIZING REGULATORY COMMISSION EXPENSE OVER 5-YEAR PERIOD)

	1940	1941	1942	1943	1944	1945
ALL SALES						
Present Value:						
Beginning of Year	$ 1808446	$ 1847694	$ 1885171	$ 1885171	$ 1885171	$ 1885171
End of Year	1847694	1885171	1885171	1885171	1885171	1885171
Average for Year	$ 1828071	$ 1866433	$ 1885171	$ 1885171	$ 1885171	$ 1885171
Net to Reserves and Return	$ 178323	$ 154451	$ 144633	$ 142354	$ 138855	$ 126866
Depreciation Reserve	38820	39905	40917	40917	40917	40917
Net Return	$ 139503	$ 114546	$ 103716	$ 101437	$ 97938	$ 85949
Net Return - %	7.63	6.14	5.50	5.38	5.20	4.56
TOTAL SALES FOR RESALE						
Present Value:						
Beginning of Year	$ 1718719	$ 1755841	$ 1792959	$ 1792959	$ 1792959	$ 1792959
End of Year	1755841	1792959	1792959	1792959	1792959	1792959
Average for Year	$ 1737280	$ 1774400	$ 1792959	$ 1792959	$ 1792959	$ 1792959
Net to Reserves and Return	$ 135562	$ 112450	$ 102387	$ 102760	$ 97625	$ 86447
Depreciation Reserve	36693	37507	38510	38510	38510	38510
Net Return	$ 98889	$ 74943	$ 63877	$ 64250	$ 59115	$ 47937
Net Return - %	5.69	4.22	3.56	3.58	3.30	2.67
SALES FOR RESALE AT CHEYENNE						
Present Value:						
Beginning of Year	$ 699445	$ 673816	$ 684804	$ 684804	$ 684804	$ 684804
End of Year	673816	684804	684804	684804	684804	684804
Average for Year	$ 686631	$ 679310	$ 684804	$ 684804	$ 684804	$ 684804
Net to Reserves and Return	$ 43915	$ 36397	$ 33581	$ 33569	$ 30558	$ 26067
Depreciation Reserve	13582	13883	14179	14179	14179	14179
Net Return	$ 30333	$ 22514	$ 19402	$ 19390	$ 16379	$ 11888
Net Return - %	4.55	3.31	2.83	2.83	2.39	1.74

EXHIBIT 248

STATEMENT NO. 3

COLORADO WYOMING GAS COMPANY

APPORTIONMENT OF GOING CONCERN VALUE

AND STATEMENT OF PRESENT VALUE

	ALL SALES	TOTAL SALES FOR RESALE	SALES FOR RESALE AT CHEYENNE.
Plant and Investment - 12/31/41	$ 1799927	$ 1704167	$ 656339
Going Concern Value	175000	165690	63813
Working Capital	45490	43028	16657
	$ 2020417	$ 1912885	$ 736809
Depreciation Deducted	135246	119926	52005
Present Value - 12/31/41	$ 1885171	$ 1792959	$ 684804
Additions - 1941	37477	37118	10988
Present Value - 12/31/40	$ 1847694	$ 1756841	$ 673816
Additions - 1940	39246	37122	14371
Present Value - 12/31/39	$ 1808448	$ 1718719	$ 659445

Official Report of Proceedings Before the Securities and Exchange Commission.

Docket No. 43-195

In the Matter of Public Service Co. of Colorado.

Place: Washington D. C.

Time: May 1, 1939

Pages 451-482

Smith & Hulse, Official Reporters
1742 K Street Northwest, Washington, D. C.

HARRY D. HANCOCK, a witness produced for and on behalf of the Declarant, having been first duly sworn by the Examiner, was examined and testified as follows:

Direct Examination.

By Mr. Burns:

Q. Please state your name.

A. Harry D. Hancock.

Q. Mr. Hancock, what is your occupation?

A. I am employed by Gas Advisers, Inc., of New York City, as President and Engineer.

Q. Have you specialized in any particular branch of the engineering profession?

A. Yes, gas engineering, for the past 27 years.

Q. Gas Advisers, Inc. is a mutual service company, is it not?

A. It is.

Q. Serving certain of the subsidiaries in the Cities Service system?

A. That is correct.

Q. How long have you been associated with Cities Service Company or any of its subsidiaries?

A. Since 1912.

Q. When, if you know, did the subsidiaries of Cities Service Company first begin to engage actively in the natural gas business?

A. In a substantial way in 1912.

Q. And that was in the Mid-Continent field?

A. That is correct.

Q. You have been engaged in that branch of the activity of the system substantially all of that time?

A. No, for the first seven or eight years I was engaged in the manufactured gas branch of the business and since that time in the natural gas branch of the business.

Q. And when you entered the natural gas branch of the business where were your offices first located?

A. In Bartlesville, Oklahoma.

Q. In the Mid-Continent field?

A. In the Mid-Continent field.

Q. When would you say, Mr. Hancock, the Amarillo field first began to attract people in the gas industry as a potential gas supply?

A. The field was discovered in 1918 and began to attract attention as a potential reserve for large volumes of gas in the early 20's. By that I mean 1922.

Q. When did it become evident it was a phenomenally large gas field?

A. The interest proceeded to increase year by year as additional drilling was done and by 1925 and 1926 the potentialities of the field were beginning to be widely recognized.

Q. Did the gas engineers in the Cities Service organization make a study of that field for the purpose of its business?

A. Yes.

Q. Were you engaged in that study to any extent?

A. Yes.

Q. In the first studies of that field, what markets had they particularly in mind?

A. In the studies as early as 1922, the markets under consideration were of a local nature in what might be called the Amarillo area for power plants and other industrial uses.

Q. Later on were markets to the east taken into account as available to be supplied with Amarillo gas?

A. They were concurrently with that time and proceeding from then on, markets such as various cities in Colorado, Kansas, Missouri, Nebraska and Illinois, which were considered as potential markets for Texas Panhandle gas.

Q. Was consideration given at an early date to the possibility of bringing gas into as far as Kansas City?

A. It was.

Q. By connecting up with the system already serving that city?

A. That is correct.

Q. And eventually a line was built to Wichita to connect with the system which supplied Kansas City, Missouri?

A. That is correct, in 1927.

Q. And studies were projected also as to the availability of that gas for the Chicago market?

A. That is correct.

Q. And Omaha?

A. That is correct.

Q. Tell me about the considerations that were given to the possibility of that gas being brought to Denver?

A. Preliminary consideration was given during the period from 1922 on. Serious consideration began in 1925 and 1926. That was both by the Cities Service Company organization and others.

Q. What are some of the factors involved in the study of bringing natural gas from a fairly remote field to a market for sale?

A. It is important that the entire project be conceived along sound engineering and economic lines, that the investment be the minimum which the construction work can be carried out at with due regard to service, and the quantities to be transported must be carefully analyzed and studied to secure the proper balance between the supply and the market outlets to be sure that a line of sufficient capacity is built at the outset because it is more economical to construct a single large line than to later construct parallel lines; to be sure that the line is not likewise over-built beyond the capacity of the market to absorb the outlet. As a general proposition natural gas to be transported long distances must be handled in comparatively large volumes. It would not be feasible to build long small lines.

Q. Well, I presume that in these studies it is contemplated that to develop a market it is necessary to displace other fuels currently being used, is that correct?

A. That is correct, except to the extent industrial plants may be attracted into the community by the availability of a natural gas supply.

Q. But as far as the existing industries and the existing possible outlets, the fuel then being used must be displaced, is that correct?

A. That is correct.

Q. So that for the kitchen range, let us say the manufactured gas supply, if there is manufactured gas, must be displaced?

A. That is correct.

Q. And for house heating, coal or oil must be displaced. Is that true?

A. Coal, oil, coke, wood, or whatever may have been used.

Q. And as far as the existing industries are concerned, if they are to be attracted so they will connect with the lines, the fuel they are using has to be displaced by gas?

A. That is right.

Q. And that is all involved in the various studies that have to be made?

A. It was.

Q. And the house heating also is obviously a seasonal load, is it not?

A. Yes, it is very seasonal in its character and not only seasonal in its character, but varies widely from year to year.

Q. Can you tell me what you found with regard to the Denver market, the Colorado market in your preliminary studies as to the feasibility of building a line to Denver?

A. Generally speaking the city of Denver is a city of homes with a high percentage of ownership by the occupants of those homes as compared with other cities, with a relatively high percentage of people living in single, or two or three family houses, as opposed to many other cities where a large percentage live in large apartment buildings. In other words, the city of Denver offers some opportunities and attraction to the development of house heating business. On the other hand, the city of Denver did not offer as attractive industrial opportunities as do other cities, particularly in the East.

Q. Then would you say there was not a large market for the sale of gas for industrial uses in Denver?

A. Comparatively speaking that is true.

Q. What would you say about other sections of Colorado? I mean eastern Colorado?

A. The next largest city in Colorado is Pueblo, and at that location there is a very large steel plant, known as the Colorado Fuel and Iron Company, which manufactures steel rails for railroads and other steel shapes, and on account of that, Pueblo has a much larger percentage of industrial opportunity compared to domestic opportunity.

Q. The Colorado Fuel and Iron Company is what is generally known as a Rockefeller project?

A. That is my understanding.

Q. What fuel were they using?

A. They were using coal.

Q. Was it coal produced from their own coal mines?

A. That is my information.

Q. Did you make any attempt to sound out that company as to the possibility of it being a prospective gas user?

A. We did.

Q. And with what result?

A. We were unable to arrange a satisfactory contract with that company for its fuel business.

Q. And was one of the reasons advanced that they were mining and utilizing their own coal as fuel?

A. That was I think the reason advanced.

Q. When did you first see that others were thinking about building a gas line to Denver?

A. The first definite information was early in 1926.

Q. Whose gas supply was being talked of for that purpose?

A. The promoters of the line to which I refer stated they were in a position to contract for the gas reserves owned by the Southwestern Development Company in the Texas Panhandle field.

Q. That was a subsidiary of the Prairie Oil and Gas at that time?

A. It was partly owned by Prairie Oil and Gas, according to my information.

Q. And the rest by Mission Oil Company?

A. Substantially all the rest by Mission Oil Company.

Q. But it was also known as a Rockefeller project?

A. That is right.

Q. Were negotiations undertaken at that time to utilize this gas supply to bring it to Denver?

A. Yes.

Q. Did the promoters come to Cities Service Company with it and suggest a joint enterprise?

A. The promoters did come to Cities Service Company.

Q. Where, in the Amarillo field, was that block of acreage owned by the Prairie Oil and Gas Company?

A. In the extreme western end of the field.

Q. So it was the end of the field nearest to Denver, is that correct?

A. That is correct.

Q. Did those negotiations come to a head because of an agreement or contract to build a line?

A. They came to a tentative agreement contingent on the ability of the promoters to finance their enterprise, but it later developed that they were unable to finance their enterprise.

Q. What was the next thing that happened with regard to the proposed line to Denver?

A. Concurrently with the negotiations which I have just referred to, the Southwestern Development Company, and the interests associated with the Southwestern Development Company, began to dicuss with Cities Service Company the possibility of building a line to Denver. Concurrently with that step Cities Service Company was contemplating building or forming a company to build a line to various cities and industries in Colorado.

The Southwestern Development Company arranged for the Standard Oil Company of New Jersey to join with it in the negotiations and discussions, and from that time, that is, about the middle of 1926, there were these three interests contemplating the building of a line to Denver. By the three interests, I mean the Southwestern Development Company, Standard Oil Company of New Jersey, and the Cities Service Company, each were contemplating the building of a line to Denver, or joining in the building of a line to Denver and other cities in Colorado.

Q. And those negotiations progressed during 1926?

A. Yes.

Q. And 1927?

A. Yes.

Q. And during that time was Cities Service Company engaged in the project of running a line east to Wichita?

A. That is correct. In 1927 the necessary preliminary work was completed, acreage was acquired, and a 20-inch line, which was the first major line from the Texas Panhandle Field, was constructed and completed on about the last day of 1927, completed as far as Wichita, Kansas, where it tied in with the existing transportation system.

Q. Now returning to the negotiations for the line west to Colorado. You say these negotiations were carried on in 1926 and the early part of 1927?

A. That is correct.

Q. And did it appear that the Southwestern Development Company interests or the Standard Oil of New Jersey interests were in a position to procure the Colorado Fuel & Iron Company as a customer where others might not be able to do so?

A. That was one of the important developments which did take place. Those two interests advanced so that they were in a position to negotiate a satisfactory contract, appeared to be in that position, and ultimately were able to negotiate a satisfactory contract with the Colorado Fuel & Oil Company.

Q. In other words they were able to supply a factor which would support the line which possibly no one else could supply as far as outlet for gas is concerned?

A. That is correct.

Q. That industrial load would complement the load that might be developed in any city served by the line?

A. That is true. It would enable the line to be operated at a higher load factor and more economically than it would have been done without such a substantial industrial load.

Q. Mr. Hancock, you have testified that you have been engaged in the manufactured gas business and also in the natural gas business. Can you tell us the fundamental or essential differences in operating those two branches of the business?

A. The differences arise from a different set of economics and costs in the two branches of the business, also involve a different conception of volume of business, and means by which those volumes can be obtained. As stated previously, the natural gas business is fundamentally one of large volume at somewhat lower prices per unit of heating value than obtains in the manufactured gas business. Gen-

erally speaking, the manufactured gas business involves the sale of gas for cooking, and water heating, and small commercial and industrial operations.

Whereas, the natural gas business includes those which I have just mentioned as well as gas sales for house heating and practically all commercial and industrial operations.

Q. Well, am I right in stating that one of the essential problems of a gas engineer in the manufactured gas business is to devote constant attention to keeping the costs of keeping manufactured gas down as low as possible? Is that one of his primary problems?

A. That is correct.

Q. And certain marketing fields, such as you have mentioned, house heating and large industrial operations that he can't even reach with manufactured gas, is that correct?

A. That is correct.

Q. So that a public utility man engaged in the manufactured business has had no experience in building up those large loads. Is that true?

A. That is true, and has been very forcibly brought to my attention and the attention of others in various localities.

Q. You have had experience, have you, in bringing gas to a community replacing manufactured gas and found difficulty with the local management in building up an outlet for the gas?

A. Yes.

Q. An the pipe line company has to jump in and augment the efforts of the local management to show them how local loads are built up?

A. That is the endeavor of the pipe line company to do that.

Q. Well, now, in these negotiations that we have been discussing, it finally ended in an agreement, did it not?

A. It did. A preliminary agreement, subject to certain conditions and developments.

Q. Was made?

A. Yes.

Q. And did that agreement provide, among other things, that the Cities Service Company was to receive 15 per cent of the stock of the company which was to build the line?

A. It did.

Q. Was the Cities Service Company to contribute to the cost of the line, the cost of building the line?

A. No.

Q. Had there been any discussions during the negotiations of the possibility of Cities Service Company having an investment interest in the line and paying a part of the cost of building the line? There had been that discussion?

A. Yes, sir.

Q. But that was dropped in the final agreement?

A. That is right. The discussions involved the purchase by Cities Service Company, or a company which would be formed for the purpose, of a larger percentage of common stock.

Q. Well, can you tell me something of the considerations which were an inducing factor whereby the participants in this line allowed Cities Service Company a 15 per cent stock interest?

A. I can tell you what was in my mind during the negotiations, and what I believe to be in the minds of others participating in those negotiations from the conversations and discussions.

The Cities Service Company, as previously stated, contemplated the building of a line, of a wholly-owned line, in Colorado. It felt that if it did not build a wholly-owned line that it was entitled to some participation in a joint enterprise. Cities Service Company further felt that it was in a position to render substantial services to the pipe line company and had rendered such services in conceiving or assisting in the conception of a pipe line along sound engineering and economic lines.

Cities Service Company also had, through Henry L. Dougherty & Company, its fiscal agent, a large and competent staff of natural gas engineers and salesmen, and other individuals who are essential and useful to the building and successful operation of such a project. It felt that the services of these men would be distinctly advantageous to a jointly owned pipe line. The hazard of building a pipe line of this character was very largely one of markets. By the time the line was undertaken the availability of the

gas supply was very largely assured for a reasonable number of years.

There were substantial engineering problems in the design and construction of a line, but all of these factors which I have just named were not as important as the uncertainty of market development.

Through this stock ownership of Cities Service Company in the Public Service Company of Colorado and the Pueblo Gas and Fuel Company, it was also in a position to lay before the Boards of Directors and management of these two companies plans for the stimulation of gas load building.

Q. Were the partners in the proposed line interested in seeing to it that the organization of the Cities Service Company, the natural gas organization, be kept available for market building in Colorado to dispose of the output of this line to Colorado?

A. They were in two directions. First, that the Talent of the Cities Service Company organization through Henry L. Dougherty and Company, its fiscal agent, be made available to the pipe line company for such marketing plans as deemed advisable in each of the localities and also that the direct services as required by the two distributing companies just named be made available to those distributing companies. That is, in the execution of the local plant for load stimulation and building.

Q. Was there also an engineering problem at the very beginning of gas service involved in the change-over of the distribution system from manufactured gas to natural gas?

A. There was.

Q. In the contract which was eventually executed between Public Service Company of Colorado and Colorado Interstate Gas Company, is this interest of the partners in the line that the Cities Service staff assist in the load building of the venture evidenced?

A. It is.

Q. Have you the contract with you?

A. No, sir; I haven't the contract before me, but I do have it in mind. It is contained in the contract between the Colorado Interstate Gas Company and the Public Service Company of Colorado under date of January 3, 1928.

Q. Now, while we are looking for that contract, may I say this, that there were several inducing factors as a result of which Cities Service Company acquired a 15 per cent interest in this line from the proposed partners in the venture and one was the fact they had been in on the study of the possible line from its earliest inception; secondly, that they had made substantial contributions to the venture in their surveys and studies which were made; and third, the participants in the enterprise wanted to be sure that the Cities Service Natural Gas organization would get behind the load building for the line on the market particularly in Denver and Pueblo?

A. Yes.

Q. As well as to assist in the mechanical job of change-over from artificial to natural gas. Are those some of the factors which resulted in Cities Service acquiring a 15 per cent interest of the line?

A. What you have just said is a fair summary of those factors.

Q. Is Section 8 of the agreement between Colorado Interstate Gas Company and Public Service Company in Colorado, the section you referred to?

A. It is.

Q. Is there anything further that you can think of to add to your testimony that bears upon this question we are discussing?

A. I might say on the latter point that the other two participants in the enterprise, Southwestern Development Company and Standard Oil Company of New Jersey, insisted and demanded a minimum requirement in the contract obligating Public Service Company to take or pay for certain specific volume of gas per day or per year. The Public Service Company was unwilling to enter into that obligation and the other two participants in the industry were only willing to forego the insertion of that requirement in view of the arrangement described in Section 8 of the contract providing for a method by which the consumption and sale of gas would be stimulated.

Mr. Burns: I have no further questions to ask of this witness.

Cross Examination.

By Mr. Davis:

Q. Mr. Hancock, in 1926 and 1927, during the period that you conducted these negotiations with the Southwestern Development Company and the Standard Oil Company of New Jersey, with what firm were you connected at that time?

A. In 1926 I was chief engineer of the Gas Service Company at Kansas City, Missouri and was delegated or borrowed, you might put it to go to Denver and engage in these negotiations and studies.

Q. Right there, was Gas Service Company then a mutual service company?

Mr. Burns: Gas Service Company is a different company altogether. It is a company engaged in the gas business, distributes gas in Kansas, Oklahoma et cetera, and Gas Advisers, Inc. is a service company. They are two different things.

By Mr. Davis:

Q. You are now President of Gas Advisers, Inc.?

A. President of Gas Advisers, Inc.

Q. At that time, in 1926, you were employed by Gas Service Company?

A. Gas Service Company.

Q. And you were loaned, so-called, to the Public Service Company of Colorado?

A. No, to Cities Service Company.

Q. To Cities Service Company?

A. Which was the owner of Gas Service Company. In 1927 I was employed directly by Henry L. Dougherty and Company, fiscal agents for Cities Service Company as chief engineer of the Natural Gas Department of Henry L. Dougherty and Company. I, however, retained my office and headquarters in Kansas City during 1927 and '28.

Q. Were you at any time during these negotiations considered an employee or a member of the staff of Public Service Company of Colorado?

A. No, sir.

Q. Now you mentioned something to the effect that the men in the utility business had no idea as to the method

of building the gas load in a particular utility property, but you didn't tell us to what date that situation was present.

Was that prior to 1926 or since that time?

A. That condition is not a function of time. It is more the function of background and experience. It still exists where the same conditions exist as existed at that time. If an organization or an individual has had long experience in the manufactured gas business, they will obviously have a manufactured gas viewpoint, and I might say at that point that the organization of the Public Service Company of Colorado at that time, in my opinion, was one of the best, if not the best manufactured gas organizations in the country and enjoyed a national reputation. So what I am saying is not critical of the Public Service Company of Colorado as an organization, but it is rather a statement of a condition which existed, namely, the necessary lack of experience in the natural gas business, because their business had been along other lines.

Q. Now, then, are you the duly authorized representative of Cities Service Company in all negotiations between the Colorado Interstate Gas Company and the other so-called partners that Mr. Burns referred to, such as the Southwestern Development Company and the Standard Oil Company; is that correct?

A. No, sir. I have participated in the negotiations.

Q. Who else was principal representative of Cities Service or Henry L. Dougherty & Company?

A. Mr. H. O. Caster and Mr. J. D. Crebeling.

Q. You described negotiations with the various participants which culminated in the building of a line by the Colorado Interstate Gas Company so that you apparently were familiar with all phases that entered into the final contract which you have identified as Exhibit 1 in the agreement. Is that correct?

A. That is true. You characterized me as the principal negotiator.

Q. I so understood from your direct testimony.

A. I just want to put the record straight that I was a party to the negotiations and was present at most of the discussions and furnished information to both Mr. Caster

and Mr. Crebeling for their guidance and use and made recommendations for them and joined in the negotiations.

Q. Was there a time in those negotiations when the Colorado Interstate Gas Company wished to contract directly with Public Service Company of Colorado and Public Service of Colorado was not permitted to enter into a contract with Colorado Interstate Company for some reason by Cities Service Company?

A. No, sir.

Q. Isn't it a fact that Cities Service Company refused to permit Public Service of Colorado to enter into a contract with Colorado Interstate Gas Company until Colorado Interstate Gas Company paid Cities Service Company by this 15 per cent stock interest in Colorado Interstate Gas Company?

A. That was not my understanding.

Q. How was the determination of the 15 per cent stock interest of 187,500 shares of stock in Colorado Interstate Gas determined as the share which Cities Service Company was to receive?

A. By negotiation and agreement. There was considerable difference of opinion, claims and counter claims, and that was the final outcome of these discussions.

Q. Were you present during the discussions?

A. Yes.

Q. And negotiations?

A. Yes.

Q. Can you tell us what some of these claims and counter claims were that led up to the final bargain of 15 per cent?

A. Many of the claims and counter claims were demands on the part of Cities Service Company that it receive at least 33-1/3 per cent of the common stock of Colorado Interstate. The Southwestern Development Company and Standard Oil Company of New Jersey felt that 10 per cent was sufficient. The discussions involved the matter of Cities Service Company not participating at all, but resulted in it building a line of its own. The discussion also involved the purchase by Cities Service Company of common stock in addition to the 10 per cent heretofore mentioned. The discussion also included the possible purchase by Cities Service Company or its nominee of a portion of the bonds to be issued by Colorado Interstate. There was

some discussion also at the time that the percentage of common stock would be allocated to the purchaser of the bonds, in which case the 33-1/3 per cent previously referred to would have been reduced to something like 28 per cent.

Those are a few of the discussions, claims and counter claims out of which grew the final agreement on the part of Cities Service Company to accept 15 per cent stock interest.

Q. Do you know whether or not Colorado Interstate Gas Company ever considered as one of the reasons for their being obliged to issue 15 per cent stock interest in their company as being grounded on the fact that Cities Service Company had refused to permit Public Service Company of Colorado to enter into a contract with Colorado Interstate Gas Company?

A. Well, there may have been statements or conversations along that line. I don't believe that was the real situation, however. The other two participants were more interested in securing a substantial load development on the line than in trying to produce the amount of common stock ownership.

Q. Now, the studies you were making in 1926 and 1927, when you say you were borrowed from the Gas Service Company—

A. Right.

Q. Weren't those being made on behalf of Public Service Gas Company of Colorado?

A. No, sir.

Q. Indirectly would you say they were being made for Public Service Company of Colorado?

A. No, because those studies involved a state-wide situation involving Pueblo and various industries which were located at various points in the State, and Public Service Company, so far as I know, was never interested in building a pipe line, and hence only had an interest at that time in procuring a gas supply for Denver and environs.

Q. Was there any discussion in these negotiations in so far as Public Service Company acquiring this interest in Colorado Interstate is concerned?

A. No.

Q. In other words, the officers and directors of Public Service Company of Colorado have never at any time entertained any idea of acquiring any interest in Colorado Interstate Gas Company simultaneously with the entry into the contract for the purchase of natural gas from Colorado Interstate Gas Company?

A. I don't know what ideas they entertained. I never heard any such ideas so expressed.

Q. When you were in Denver, you saw Mr. Fowler, Mr. Loiseau and Mr. Board, did you not?

A. Yes.

Q. And you discussed this entire problem with them?

A. Yes.

Q. And was that question at all discussed as to the feasibility of acquiring directly without going through the *circuitous* route of inquiring into Cities Service Company?

A. No, sir; it was not discussed.

By Mr. Burns:

In 1926 and 1927, were you considering the feasibility of constructing a pipe line from the Amarillo Field to Colorado?

A. Yes.

Q. And whether that was to be constructed by Cities Service Company alone or in conjunction with others is the problem which you had under consideration?

A. That is correct.

By Mr. Davis.

Q. Now, Mr. Hancock, those expert services that the Cities Service Company organization rendered, and which was one of the claims you mentioned in this contract, as being one of the reasons for this 15 per cent interest to the effect that they would get behind a load building of the line, etc., did the Cities Service Company charge the Public Service Company of Colorado for that service?

A. Henry L. Dougherty & Company, fiscal agents for Cities Service Company, received compensation for that portion of the services rendered directly to Public Service Company of Colorado in the way of supplying experienced new business men, distribution engineers, men familiar with the change-over procedures. In other words, the work

which was done in Denver and environs was handled in accordance with the service contract then in existence. In other words the supplying of personnel, which if not so supplied, would have had to been secured by Public Service from other sources, if it could have been so secured. The character of service to which I refer as being of the most value from the standpoint of the Colorado Interstate was the conception of sales plans and procedures presented to the Colorado Interstate Gas Company with suggestions as to how it proceeds to convince its city gate customers of the soundness of this plan, resulted in the stimulation of sale of gas for all the domestic and commercial purposes.

Q. Mr. Hancock, when I ask you a question a few moments ago as to whether or not you knew one of the reasons Cities Service Company obtained this 15 per cent stock interest was because Cities Service Company had refused to permit Public Service of Colorado to enter into a contract with Colorado Interstate Gas Company, you answered me that had not been the fact.

A. I don't think that was the fact: no, sir.

Q. I was reading that statement from a copy of the minutes of Colorado Interstate Gas Company. Did you know that statement was in the minutes of Colorado Interstate Gas Company?

Mr. Burns: I object to this as incompetent. It seems if they want to introduce the minutes of the Colorado Interstate Gas Company as proof of the inducing factor, that they ought to have the people here who prepared those minutes so that they will be subject to cross-examination. The question he is asking now is tantamount to his offer of the minutes in evidence.

Mr. Davis: I asked him if he knew.

Mr. Burns: I am afraid that really is the same thing as putting them in the record.

Mr. Davis: He could tell us whether he knows.

Mr. Burns: Suppose he says yes or suppose he says no, the record shows in an indirect way that the minutes of the Colorado Interstate Company make a certain statement. Now if that statement is to be put in, it ought to be put in in proper form and have the people here who prepared

those minutes and say how it was they happened to phrase the minutes that way, and whether the person that phrased the minutes knew what he was talking about, or whether it was just some lawyer trying to dress up some minutes.

Mr. Stern: The statement is a proper one on cross examination whether this witness knows that was in the minutes, and his knowing it was in the minutes, whether it was a factor in the consideration. That is what I take it Mr. Davis was asking.

By the Examiner:

Q. Do you know anything about the minutes?
A. I know about it now.
Q. Did you know about it until the question was asked?
A. Yes, but not until last week.

The Examiner: Off the record.

(Discussion off the record.)

The Examiner: On the record.

Mr. Stern: If the witness will state regardless of the appearance of this statement in the minutes of the Colorado Interstate Company his impression for the reasons for this contract were those he stated and he would not change it regardless of what appeared on the minutes, I understand that is correct.

The Witness: I will state that very definitely.

Mr. Davis: That is all.

(Witness excused.)

The Examiner: Now, I think we told the reporter that he need not get anybody to relieve him that you were going to get through in five minutes, and you have used twenty. We will recess until ten o'clock tomorrow morning.

(Whereupon, at 5:20 o'clock p. m., an adjournment was taken until 10 o'clock a. m., Tuesday, May 2, 1939.)

"Securities and Exchange Commission
Washington

Holding Company Act

Release No. 2444

December 23, 1940

In the Matter of
Cities Service Company
File No. 31-408
Public Utility Holding Company
Act of 1935—Sections 3 (a) (3)
and 3(a) (5)

Exemption of Holding Company or Subsidiary
Exemption Denied

Application for exemption from the provisions of the Public Utility Holding Company Act having been filed by a holding company, under Sections 3(a) (3) and 3(a) (5) of the Act, held that the applicant is not only incidentally a holding company within the meaning of Sections 3(a) (3), that the applicant derives a material part of its income from its public-utility subsidiary companies within the meaning of Section 3(a) (3), that the exemption provided by Section 3(a) (5) is not available to applicant because the great bulk of its public-utility subsidiaries are domestic companies, that the applicant derives a material part of its income from such companies within the meaning of Section 3(a) (5), and that exemption of the applicant would be detrimental to the public interest or the interest of investors or consumers, but that the effective date of the order denying the application will be deferred for 20 days."

As of July 11, 1939, Cities Service Company "owned and held with power to vote 92.4% of the outstanding voting securities of Power and Light" (Cities Service Power & Light Company); "Power and Light" owns and holds with power to vote 100% of the outstanding voting securities of Public Service Company of Colorado, which last named company owns and holds with power to vote 100% of the outstanding voting securities of Colorado-Wyoming Gas Company, petitioner herein.

Docket G-1214

COLORADO INTERSTATE GAS COMPANY
STATEMENT OF GAS SOLD M.C.F.
(ON UNIFORM PRESSURE BASE OF 14.65 LBS.PER SQUARE INCH)

For Year 1959	Delivery Point	January	February	March	April	May	June	July
Direct Consumers								
American Crystal Sugar Company	Rocky Ford	2,437	2,586	2,821	1,217	752	485	248
Atchison, Topeka & Santa Fe Ry. Co.	La Junta	43,597	39,861	37,586	31,982	29,149	27,486	30,182
Colorado Portland Cement Company	Portland	141,950	115,562	148,745	137,880	137,348	137,957	156,800
Colorado Fuel & Iron Corporation	Pueblo							
Boiler Gas		291,784	327,907	305,606	299,056	257,143	222,568	197,135
Metallurgical Gas		270,713	391,870	378,690	378,366	349,453	275,197	248,686
Total Colorado Fuel & Iron Corporation		562,497	719,777	684,296	677,422	606,596	497,765	445,821
U. S. Department of the Interior	Thatcher	113	99	88	74	58	41	31
Veterans' Administration	Fort Lyon	26,842	27,150	21,970	20,360	13,673	12,885	8,195
Total Direct Consumers		777,436	904,175	886,586	822,293	788,176	676,437	641,877
Arkansas Valley Natural Gas Company	Various	8,674	8,706	6,961	4,938	3,070	1,975	1,754
Citizens Utilities Company	Various	17,695	17,695	16,898	12,009	8,535	6,572	5,807
City of Colorado Springs	Colorado Springs	86,199	82,251	72,349	58,150	54,083	46,491	60,347
Pueblo Gas & Fuel Company	Pueblo	47,975	51,314	39,169	38,231	28,176	30,561	23,961
Public Service Company of Colorado	Various	823,600	888,707	631,384	613,926	487,473	356,248	382,206
Sub-Total		984,083	1,048,673	766,161	727,254	581,317	441,941	414,075
Colorado-Wyoming Gas Company	Littleton	350,501	273,646	190,338	190,998	260,346	234,666	164,120
Total Denver Line		2,112,020	2,225,834	1,843,085	1,740,101	1,569,839	1,353,044	1,220,072
Natural Gas Pipeline Company of America	Gray	1,685,613	1,666,589	1,671,998	1,755,545	1,670,371	1,692,810	1,683,497
Grand Total		3,797,633	3,892,423	3,521,083	3,495,646	3,240,210	3,045,854	2,844,169

Exhibit No. 307 (1)

2418

D124 etc

307

July	August	September	October	November	December	Total
[illegible]	152	143	189,835	188,076	5,766	332,998
30,482	30,363	30,056	36,991	44,368	46,294	427,169
156,800	167,519	138,151	140,786	130,657	129,356	1,676,091
197,435	200,512	262,475	296,071	373,599	368,084	3,360,520
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
31	30	35	50	57	67	745
8,195	9,907	10,090	16,617	21,138	23,361	212,066
641,877	635,165	685,881	977,409	1,147,270	963,779	9,906,446
1,754	2,648	2,309	4,671	7,233	8,658	61,077
5,887	6,158	6,467	8,126	12,932	15,491	133,665
60,347	50,801	43,608	66,708	93,407	91,607	805,981
23,961	27,779	29,874	36,157	47,589	49,922	450,648
322,206	322,008	343,333	475,906	676,012	726,482	6,637,119
414,075	438,794	485,471	991,568	837,113	892,100	8,088,490
161,789	173,183	201,068	258,775	306,778	275,749	2,884,762
1,880,672	1,849,142	1,315,480	1,887,752	2,291,161	2,131,628	20,879,696
1,683,487	1,795,738	1,922,654	1,789,913	1,734,610	1,754,294	20,367,638
2,614,169	3,042,880	2,838,074	3,617,665	4,085,771	3,885,922	41,247,330

Docket G-1214

COLORADO INTERSTATE GAS COMPANY
STATEMENT OF GAS SOLD M.C.F.
(ON UNIFORM PRESSURE BASE OF 14.65 LBS. PER SQUARE INCH)

Per Year 1940	Delivery Point	January	February	March	April	May	June	July
Direct Consumers								
American Crystal Sugar Company	Rocky Ford	3,921	2,354	1,516	1,207	426	838	111
Atchison, Topeka & Santa Fe Ry. Co.	La Junta	51,082	42,121	34,413	33,385	38,409	29,701	27,872
Colorado Portland Cement Company	Portland	79,569	123,805	132,291	128,623	134,464	167,551	175,333
Colorado Fuel & Iron Corporation	Pueblo							
Boiler Gas		439,573	354,807	335,847	231,103	241,360	311,614	179,007
Metallurgical Gas		427,576	388,453	319,270	247,691	257,160	296,335	131,142
Total Colorado Fuel & Iron Corporation		867,149	742,660	655,117	478,794	498,520	607,949	310,149
U. S. Department of Interior	Thatcher	93	74	63	53	39	28	29
Veterans' Administration	Fort Lyon	28,254	22,022	19,923	20,835	14,070	9,874	6,591
Total Direct Consumers		1,030,008	933,836	843,383	662,837	679,928	815,365	520,085
Arkansas Valley Natural Gas Company	Various	12,007	8,792	7,589	1,760	1,116	474	179
Citizens Utilities Company	Various	23,690	27,940	16,391	15,608	12,601	9,836	8,071
City of Colorado Springs	Colorado Springs	99,707	83,684	82,133	72,807	65,150	58,958	58,510
Pueblo Gas & Fuel Company	Pueblo	67,444	54,538	42,600	42,469	35,080	30,996	24,694
Public Service Company of Colorado	Various	1,801,275	870,455	681,570	625,418	469,577	372,870	321,476
Sub-Total		1,204,123	1,045,409	830,333	758,062	583,524	473,134	412,930
Colorado-Wyoming Gas Company	Littleton	300,809	264,484	198,726	208,776	200,123	176,518	191,137
Total Denver Line		2,534,340	2,243,789	1,872,388	1,629,675	1,463,575	1,465,011	1,124,152
Natural Gas Pipeline Company of America	Gray	1,741,397	1,743,489	1,662,121	1,651,994	1,795,825	1,515,019	1,788,861
Grand Total		4,275,737	3,987,158	3,534,503	3,281,669	3,259,400	2,980,030	2,913,013

Exhibit No. 307 (2)

1109

July	August	September	October	November	December	Total
111	111	131	110,004	207,640	96,589	424,242
27,872	27,686	27,487	31,592	39,466	43,764	420,778
175,333	124,879	123,822	65,961	114,543	172,156	1,542,597
179,007	234,477	210,863	239,818	318,484	363,542	3,459,925
131,142	147,051	186,941	179,118	360,035	364,348	3,307,120
310,149	381,528	399,804	418,936	678,519	727,890	6,767,045
89	29	41	67	94	101	711
6,591	8,279	8,823	14,936	21,162	24,502	200,071
520,085	542,452	560,108	641,496	1,061,484	1,064,982	9,355,814
179	179	503	1,340	2,188	2,244	38,371
8,071	8,816	9,656	11,587	20,165	26,833	191,194
58,510	54,025	73,387	83,581	101,244	110,757	943,943
24,694	25,891	28,370	38,958	58,608	63,181	512,879
321,476	331,741	384,716	501,016	809,560	884,398	7,254,072
412,930	420,652	496,632	636,482	991,765	1,087,413	8,940,459
191,157	178,411	195,285	229,822	332,569	308,840	2,784,694
1,124,152	1,141,515	1,252,025	1,507,800	2,385,758	2,461,235	21,081,197
1,788,861	1,614,292	1,580,148	1,784,784	1,667,222	1,763,952	20,309,044
2,913,013	2,755,807	2,832,173	3,292,584	4,052,980	4,225,187	41,390,241

Docket G-124

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COLORADO-WYOMING GAS COMPANY
STATEMENT OF GAS SOLD M.C.F.
(ON UNIFORM PRESSURE BASE OF 14.65 LBS. PER SQUARE INCH)

Per Year 1939	Delivery Point	January	February	March	April	May	June	July
Direct Customers								
Denver Board of Water Commissioners	Marston Lake	1,664	1,487	1,170	957	110	30	14
Federal Prison Farm	Denver							
Adolph Coors Company	Golden	1,748	1,809	1,683	1,880	1,147	1,709	490
Golden Fire Brick Company	Golden	3,796	3,910	995	3,694	6,047	10,582	5,861
Public Service Company of Colorado	Valmont					25,054		
Kuner-Empson Company	Brighton	2,362	2,187	2,001	2,197	1,006	944	800
Great Western Sugar Company	Johnstown	33,695	34,847	31,708	34,204	35,290	16,841	113
Denver Pressed Brick Company	Loveland	3,333	4,095	1,841	3,161	4,688	5,411	4,944
Colorado Portland Cement Company	La Porte	108,634				98,956	126,069	93,568
Producers Canning Company	Fort Collins	3						248
Fort Collins Producing Company	Wellington Field	650	808	518	106			
Sub-Total		155,883	49,083	38,916	46,179	172,598	161,580	106,038
U. S. War Department								
Fort Logan	Ft. Logan	633	623	587	664	610	768	778
Fort Warren	Ft. Warren	1,473	1,529	1,346	1,447	1,309	1,312	1,202
Total U.S. War Department		2,106	2,152	1,933	2,111	1,919	2,080	1,980
Green Gables Country Club	Denver	354	359	275	277	150	108	97
Domestic Taps	Various	574	591	452	392	177	149	116
Total Direct Customers		158,917	52,185	41,576	48,959	174,844	163,917	108,231
Highway Gas Company	Loveland	466	575	366	336	251	273	431
Greeley Gas & Fuel Company	Greeley	17,883	19,475	13,870	12,843	8,678	8,092	7,469
Cheyenne Light Fuel & Power Company	Cheyenne	54,816	58,722	41,280	42,005	25,148	20,148	15,797
Public Service Company of Colorado	Various	121,947	130,722	94,355	87,043	48,765	37,651	32,354
Sub-Total		195,112	209,494	149,811	142,227	82,842	66,164	56,051
Grand Total		354,089	261,679	191,387	191,186	257,686	230,081	164,282

Exhibit No. 308 (1)

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308

July	August	September	October	November	December	Total
						308
14	19	35	184	824	1,148	7,680
					68	68
490	68	104	1,043	1,764	1,892	15,617
5,861	5,568	4,837	4,788	3,841	3,581	57,100
				1,656		26,710
800	4,314	8,577	4,779	2,474	1,979	33,680
113	39	16,688	37,031	36,141	35,653	312,548
4,964	3,723	3,676	3,776	2,964	3,986	44,878
93,568	96,932	96,160	93,256	94,998	55,383	864,390
218	32					283
	92	405	889	389	699	3,894
106,038	110,787	130,478	145,046	145,271	104,869	1,366,728
778	698	591	593	520	507	7,572
1,202	1,162	1,218	1,264	1,249	1,044	15,555
1,980	1,860	1,809	1,857	1,769	1,551	23,127
97						1,680
116						2,451
108,231	112,647	132,287	146,903	147,040	106,420	1,393,896
431	297	286	453	470	445	4,649
7,469	7,520	8,653	10,991	15,136	16,796	147,406
15,797	17,814	20,102	30,266	43,207	45,562	414,807
32,354	36,584	38,228	64,278	97,771	106,345	896,043
56,051	62,215	67,269	105,988	156,584	169,148	1,462,905
164,282	174,862	199,556	252,891	303,624	275,568	2,856,801

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CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1944.

No. 575

COLORADO-WYOMING GAS COMPANY, a corporation,
PETITIONER,

vs.

FEDERAL POWER COMMISSION; COLORADO INTERSTATE GAS COMPANY, a corporation; CITY & COUNTY OF DENVER, COLORADO; PUBLIC SERVICE COMMISSION OF WYOMING; PUBLIC SERVICE COMPANY OF COLORADO; and CANADIAN RIVER GAS COMPANY, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

DONALD C. MCCREERY,
PAUL W. LEE,
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OCTOBER, 1944.

EASTWOOD PRINTING CO., 2031 CURTIS STREET, DENVER

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1944

No.

COLORADO-WYOMING GAS COMPANY, a corporation,
PETITIONER,

vs.

FEDERAL POWER COMMISSION; COLORADO INTERSTATE GAS COMPANY, a corporation; CITY & COUNTY OF DENVER, COLORADO; PUBLIC SERVICE COMMISSION OF WYOMING; PUBLIC SERVICE COMPANY OF COLORADO; and CANADIAN RIVER GAS COMPANY, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

Colorado-Wyoming Gas Company, petitioner herein, (referred to as "Colorado-Wyoming Company" or "petitioner") prays that this Court issue its writ of certiorari to review the final judgment of the United States Circuit Court of Appeals for the Tenth Circuit (referred to as "Court of Appeals") *(R. V. 2, p. 1120)*, affirming a final order of the Federal Power Commission (referred to as "Commission") under the "Natural Gas Act" of 1938, which order found that "the rates and charges made, demanded and received by Wyoming Company for and in connection with the transmission and sale of natural gas for re-

sale in interstate commerce * * are unjust, unreasonable and excessive to the extent of $119,000 per year," and directed reduction thereof accordingly *(R. V. 1, pp. 94-96)*.

OPINIONS BELOW.

The opinion of the Court of Appeals *(R. V. 2, pp. 1092-1120)*, in case entitled *Colorado-Wyoming Gas Co. v. Federal Power Commission, et al.*, is reported in 142 F. (2d) 943. The opinion and order of the Commission *(R. V. 1, pp. 45-85, 94-97)* is reported in 43 P.U.R. (n.s.) 205.

JURISDICTION.

The judgment of the Court of Appeals was entered July 8, 1944 *(R. V. 2, p. 1120)*; Petition for rehearing herein, filed on July 26, 1944 *(R. V. 2, p. 1123)*, was overruled August 9, 1944 *(R. V. 2, p. 1161)*. The jurisdiction of this Court is invoked under *Section 347(a) (Section 240, amended)* of the Judicial Code *(U.S.C.A., Title 28, Sec. 347(a))*, and *Section 19(b)* of the Natural Gas Act *(52 Stat. 821; 4 U.S.C.A., Title 15, Sec. 717r(b))*.

STATUTE INVOLVED.

The statute involved is the Natural Gas Act *(52 Stat. 821; U.S.C.A., Title 4, Sec. 717)*, the pertinent provisions of which are set forth in *Appendix A, this petition.*

QUESTIONS PRESENTED.

For clarity, each of the "Questions Presented" is preceded by a statement of the particular issue involved, based upon the record herein (with reference thereto) and the controlling law, as petitioner contends.

1. The Court of Appeals has ignored the statutory limitation upon the rate-regulatory jurisdiction of the Commission in that the jurisdiction of the Commission over this petitioner in this rate case under the Natural Gas Act is limited by law to rate-regulatory jurisdiction at the Cheyenne, Wyoming, "city gate" only *(R. V. 1, pp. 79, 120-126; R. V. 3, Ex. 10, pp. 2-4, Ex. 1, p. 7, Ex. 51, pp. 1-6)*.

The question presented then is: Whether the rate-regulatory jurisdiction assumed by the Commission over the intrastate operations of this petitioner in the State of Colo-

rado *(R. V. 1, p. 79)*, approved by the silence of the Court of Appeals, is without authority of and contrary to law and particularly *Section 1 (b)* of the Natural Gas Act.

2. The alleged "original cost" rate base, as determined by the Commission and approved by the Court of Appeals, is not the *entire* "original cost" in fact, in that it does not cover engineering design and construction costs in any amount or at all *(R. V. 1, pp. 244, 203)*.

The question presented then is: Whether the failure and refusal of the Commission and the Court of Appeals to include engineering design and construction in the rate base of this petitioner is contrary to law.

3. The Commission adopted a "prudent investment" rate base, so-called, predicated solely upon its alleged "original cost" as the exclusive measure of rate base *(R. V. 1, p. 69)*, and in so doing discarded in its entirety the principle of "fair value."

The question presented then is: Whether such action of the Commission and of the Court of Appeals was erroneous as a matter of law.

4. The Court of Appeals approved "the service life principle for determining annual and accrued depreciation" promulgated by the Commission *(R. V. 2, pp. 1114-1116)*. The Commission determination of "service life" disregarded the record in this case, wherein it affirmatively and specifically appears that there is no foundation of "substantial evidence" to support the speculative guesses and conclusions of service life adopted by the Commission *(R. V. 1, pp. 468-503, 65)*.

The question presented then is: Whether the determination of service life depends upon the existence of basic facts which must be disclosed in the record, and whether, in the absence of such basic facts in the record, the determination of the Commission is arbitrary and contrary to law.

5. The Commission determination of "depreciated original cost" adopted by the Court was arrived at from the assumed "service life" by simple arithmetical proration *(R. V. 1, pp. 556-562)*.

The question presented then is: Whether such determination of "depreciated original cost" is without support in the record and contrary to law.

6. The Commission, with the approval of the Court of Appeals, disallowed all "going concern value" on the authority of "This Commission and regulatory agencies in general" *(R. V. 1, p. 68)*, disregarding entirely the clear, specific and uncontroverted evidence in the record that the so-called "original cost," as found by the Commission, includes only "bare bone" cost of physical items of property, and does not reflect "a reasonable allowance" or any allowance whatever "in the other items and particularly in the appraisal of the physical assets as a part of the assembled whole" *(R. V. 1, pp. 203, 288, 297-298)*. The Commission did not offer any evidence in refutation of the affirmative evidence by petitioner *(R. V. 2, pp. 601-606)* of the fact of "going concern value" of its property and business.

The question presented then is: Whether such action of the Commission in denying as a matter of law any and all "going concern value" is contrary to law.

7. The opinion and order of the Commission approved by the Court of Appeals, under the subject title of "Allocation of Cost of Service," is predicated upon the following assumptions and conclusions, to-wit:

(1) It is assumed that the property of this petitioner and the properties of Colorado Interstate Gas Company and Canadian River Gas Company, admittedly separate and independent for all other purposes in all respects and for all other purposes, including rate making, nevertheless properly may be "integrated" as a single system for purposes of allocation required in this case *(R. V. 1, p. 79)*.

(2) The Commission "Allocation of Costs," approved by the Court of Appeals, is not based in whole or in part upon the peak-day deliveries or other operations of this petitioner, but is predicated upon the peak-day deliveries and operations of Colorado Interstate Gas Company *(R. V. 3, Ex. 226, Table 2, Line 28, Col. 7, 8, 9; R. V. 1, pp. 186, 358; R. V. 2, pp. 728-732, 561-562)*.

(3) The inaccuracy manifest in the record as to the

asserted factual basis adopted by the Commission for its conclusions of "allocation of cost of service" is ignored by both the Commission and the Court of Appeals. Such alleged basic facts are grossly inaccurate, and admittedly merely averages, estimates and guesses *(R. V. 2, pp. 728-732, 735-744, 746-748, 751-754, 756-758, 762, 764-765).*

(4) The Commission "Allocation of Cost of Service," approved by the Court of Appeals, *admittedly does not involve and is not predicated upon any allocation of property whatever* as between property and operations subject to the rate-regulatory authority of the Commission in this case and property and operations not subject to that authority in this case, nor does it give consideration to the *actual* operating conditions of petitioner's system including priority of domestic service over industrial service of gas *(R. V. 1, p. 80; R. V. 2, pp. 561-562, 730-731, 786-789).*

(5) It is assumed by the Commission "All that can be accomplished by an allocation of physical properties can be attained by allocating costs including the return" *(R. V. 1, p. 80)* and adopted by the Court of Appeals in the following language: "The Commission further stated that it did not follow from that obligation (i.e., "allocation of the property used in regulated business from that used in unregulated business") that an allocation of physical property or portions thereof must be made before any excessive returns were determined. • • • The separation or allocation may be effected by application of any formula which makes the principle a working one suitably adapted to the particular circumstances." *(R. V. 2, pp. 1112-1113).*

The question presented then is: Whether the allocation of cost of service, so-called, adopted in this case is without support in the record and contrary to law.

8. The opinion and order of the Commission with respect to material and fundamental issues do not disclose the foundation and basis in the record for the Commission action, nor are specific, essential and responsible findings of fact made and incorporated therein, with respect especially to jurisdiction, "original cost," "service life," allocation and

distribution of ordered review *(R. V. 2, pp. 52, 59, 65, 82-83, 85, 94-96)*.

The question presented then is: Whether thereby the statutory judicial review is thwarted, in that it cannot be determined by the reviewing court "other than by sheer acceptance of the Commission conclusion" what, if any, are the factual foundations therefor.

9. The Commission conclusion as to each of the material issues of jurisdiction, "original cost," depreciation, going concern value and allocation was not supported by "substantial evidence" and contrary to the law specifically controlling the determination of each of such material issues.

The question presented then is: Whether the order of the Commission is arbitrary, unreasonable, capricious, erroneous and unauthorized, and violates the Fifth Amendment to the Constitution of the United States.

10. The Court of Appeals in its opinion herein declared: "And the right of the Commission to make a finding of unreasonableness depends upon the existence of the fact • • •. We are content to say that a careful examination of the entire record convinces us that the finding is supported by substantial evidence • • •." *(R. V. 2, p. 1105)*. Under the law of the land the review provided, and to which this petitioner is entitled, is a review predicated upon the statutory standard that the "findings as to the facts" must be supported by "substantial evidence."

The question presented then is: Whether the asserted ultimate conclusion or finding of "unreasonableness" is without the support of substantial evidence as to each and every issue of material fact and erroneous as a matter of law.

11. The Court of Appeals relied upon *Federal Power Commission v. Hope Natural Gas Company*, 320 U. S. 591, 64 Sup. Ct. 281, and *Federal Power Commission v. Natural Gas Pipeline Company*, 315 U. S. 575, 62 Sup. Ct. 736, as requiring that court to decide the review herein against this petitioner *(R. V. 2, pp. 1106-7, 1114, 1119, 1120)*, thereby depriving this petitioner altogether of any real and effective court review of the Commission order.

The question presented then is: Whether the decisions of this Court in the *Hope Natural Gas Company* and *Natural Gas Pipeline Company* cases required the Court of Appeals so to decide, and if so, whether certain of the declarations and holdings of this Court in such decisions are contrary to the terms and provisions of the Natural Gas Act and in violation of the constitutional rights of this petitioner under the Fifth Amendment to the Constitution.

12. This Court, in the case of *Federal Power Commission v. Hope Natural Gas Company*, 320 U. S. 591, declared: "And he who would upset the rate order under the Act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences."

The question then presented is: Whether that position of this Court is contrary to the Natural Gas Act and other law of the land.

13. The Court of Appeals in this case in effect held the Commission determination of: (1) basic material facts; (2) ultimate conclusions; (3) issues of law; and (4) questions of jurisdiction, to be immune to the statutory judicial review accorded by the law of the land and particularly the Natural Gas Act.

The Court of Appeals also failed and refused to decide this case separate and apart from the issues in the cases of *Canadian River Gas Company* and *Colorado Interstate Gas Company, upon the independent issues herein presented.*

The question presented then is: Whether this petitioner has been denied "due process of law" by reason of erroneous and illegal assumptions and conclusions as to administrative finality and judicial impotency.

"SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED."

As disclosed by the "Questions Presented," *ante*, the Commission action, under examination in this review, involves fundamental errors, relating particularly: to the area of the rate-regulatory authority of the Commission over this petitioner in this case; to the character or the manner in which that rate-regulatory authority may be exer-

cised; to the probative substance of the evidence upon each of the issues of material fact; and to the propriety and legality of the ultimate findings and conclusions upon which its order is predicated. And finally, there is presented the important fact and issue: what is the character and extent of the statutory duty of review imposed by law upon the Court of Appeals and this Court.

Colorado-Wyoming Company is a small company. It presently owns and operates a natural gas transmission system from a point near Littleton, Colorado, to Cheyenne, Wyoming, with several branches. The main trunk line is approximately 114 miles long, *of which 10.5 miles are in Wyoming.* Branch lines are approximately 81 miles in length, *of which 2.3 miles serving the United States government at Fort Warren, Wyoming are in Wyoming.* (See *Map, R. V. 3, Ex. 50, Appendix B, this petition)* In 1939, the test year adopted by the Commission, the total gross sales of the Company were 3,332,446 M.c.f., producing $828,938 *(R. V. 3, Ex. 115, St. No. 1).* The total "sales for resale" of the Company were 1,706,000 M. c. f., producing a gross revenue of $579,000, of which "sales for resale" at the Cheyenne, Wyoming, "city gate" were 494,000 M. c. f., producing $182,000. Such Wyoming "sales for resale" were less than one-third of the total "sales for resale," both in quantities of gas sold and in gross revenue derived therefrom *(R. V. 1, pp. 126-128; R. V. 3, Ex. 245; St. No. 8).*

All cities, towns and communities supplied with natural gas by petitioner are served through contracts with sundry distribution companies "for resale for ultimate public consumption" for domestic and commercial use *(R. V. 1, pp. 190-193).* The only city or community served by petitioner outside the State of Colorado is the City of Cheyenne, Wyoming *(R. V. 1, p. 121).* Industrial users and public authorities are served directly by petitioner under contracts of "direct sale" to such customers as the ultimate consumers *(R. V. 1, pp. 193-200).* The only industrial user or public authority served outside of the State of Colorado is the United States government at Fort Warren, Wyoming *(R. V. 1, p. 121).*

Colorado "direct sales" aggregated 1,622,231 M. c. f., producing $241,948, and Wyoming "direct sales" aggregated 18,527 M. c. f. in 1939, producing $7,410 *(R. V. 1, p. 127. R. V. 3, Ex. 202, p. 32)*.

Petitioner company began operations in 1925. During the years 1925 to 1927 that part of the Company's system from and including Fort Collins, Colorado, north to and including Cheyenne, Wyoming, was constructed. At that time petitioner secured its entire gas supply from the Wellington Field of the Continental Oil Company, near Fort Collins, Colorado. That gas supply had been expected and was relied upon to meet all requirements of the Company with respect to its then completed system for a long term of years. However, it became apparent early in the year 1929 that the supply of gas from the Wellington Field, then rapidly diminishing, shortly thereafter would be entirely exhausted. As a consequence, it became essential at once for the Company to secure a new and independent source of supply to continue service to its then customers and to protect its own investment. The only supply available was Texas gas from the Texas Panhandle-Denver pipeline of Colorado Interstate Gas Company. Accordingly, a twenty-year contract for the purchase of such Texas gas from the company last named was entered into in October, 1929, such gas to be purchased from Colorado Interstate Gas Company and delivered to Colorado-Wyoming Company at the Arapahoe metering station of this petitioner near Littleton, Colorado.

In the years 1929 and 1930, petitioner constructed 73 miles of main 10-inch and 8-inch transmission line from the Arapahoe measuring station near Littleton, Colorado, to Fort Collins, Colorado, where connection was made with the then existing operating system of petitioner from Fort Collins, Colorado, to Cheyenne, Wyoming.

After construction of the Arapahoe-Fort Collins main line, and the commencement of purchase of gas at the "Arapahoe Station" near Littleton, Colorado, there was no enlargement or extension of facilities or service in or for Wyoming.

In the years 1929 to 1931, several branch transmission lines were constructed from the newly constructed Littleton-Fort

Collins line for the sale and delivery of gas for resale for ultimate public consumption in about a dozen different cities and towns, all in the State of Colorado. In the years from 1932 to 1939, lateral lines also were constructed to serve sundry industrial customers under direct sales, all in the State of Colorado.

(R. V. 1, pp. 121-126).

There were thus in fact two separate and independent stages in the development of the Colorado-Wyoming Company system: (1) 1925-1929, the construction, completion and utilization of the Fort Collins-Cheyenne system served exclusively by the Wellington, Colorado, gas field of the Continental Oil Company; and (2) 1929-1941, the construction, completion and utilization of the Littleton-Cheyenne system and branches, now served (except about 2%) from the Texas Panhandle field by the facilities of the Canadian River and Colorado Interstate companies. In this fundamental change in the company's operations, the original and complete Fort Collins-Cheyenne system has become a part only of the now operating Littleton-Cheyenne system. This historical development of the enterprise is significant and highly important in connection with certain phases of this case hereinafter considered.

Colorado-Wyoming Company presently purchases its gas supply in Colorado (near Littleton) from Colorado Interstate Gas Company. Such completed sale by the latter named company to petitioner is subject to the rate-regulatory authority of the Commission, and that authority was exercised by the Commission in the fixation of rates charged by Colorado Interstate Gas Company to Colorado-Wyoming Company at the Arapahoe metering station near Littleton, Colorado *(Colorado Interstate Gas Company v. Federal Power Commission, et al., 142 F. (2d) 943; R. V. 1, pp. 85, 90-94).*

The systems of the two companies are connected solely for the purposes of such sale, purchase and delivery. The two systems are entirely independent in management, control and operation. They are not "integrated," or in any sense a single system, or combined in any manner, or for any purpose. Upon this the record is clear *(R. V. 1, pp. 120-121.*

122-123; V. 3, Ex. 10, pp. 2-4). This fact is admitted by the Commission in its opinion *(R. V. 1, p. 79)* and by the impressive fact that throughout the proceedings before the Commission and the rate determinations made by it, Colorado-Wyoming Company was of necessity considered and dealt with as wholly separate from and independent of Colorado Interstate Gas Company (save only that the Commission, unsupported by fact, resorted to the fiction of "integration" for purposes of its "allocation of cost," so-called). Colorado-Wyoming Company, *then an operating company*, was no part of or in any manner considered in or a part of the agreed plan of development *(R. V. 3, Ex. I, p. 7)* of the Texas pipeline to Denver *(Op. of Ct. of App., 142 Fed. (2d) 943, 948-949)* but became merely a purchaser of such gas at a later date because of the unexpected exhaustion of its supply of gas from the Wellington Field in Colorado *(Op. of Ct. of App., 142 Fed. (2d) 943, 950) (Comm. Ex. 51, R. V. 3, pp. 1-6).*

It appears in the record, without dispute, that the system of Colorado-Wyoming Company, as originally built and as later enlarged, was conceived, constructed and at all times operated on the foundation of the priority of domestic and commercial customers served under "sales for resale" contracts over industrial customers served through contracts for "direct sales" *(R. V. 1, pp. 128, 150-152).*

Preference for domestic users and "cut off" or "shut off" of industrials if necessary to supply the demands of domestic users is a fundamental characteristic of the Colorado-Wyoming Gas Company system and of its operations. Such preference and "shut off" is provided and required in several ways; and as shown by evidence in this case:

By the contract between Colorado Interstate Gas Company and Colorado-Wyoming Gas Company *(R. V. 3, Ex. 101, pp. 4-5);* by contracts between Colorado-Wyoming Gas Company and Public Service Company of Colorado *(R. V. 1, p. 192);* by the respective contracts between Colorado Interstate Gas Company and Public Service Company of Colorado, Pueblo Gas and Fuel Company and Colorado-Wyoming Gas Company, in which the cities of Denver and Pueblo are given priority over Colorado-Wyoming Gas

Company *(R. V. 3, Ex. 101, p. 4)*; and by the various franchises to the distribution companies granted in Arvada, Berthoud, Boulder, Fort Collins, Golden, Greeley, Johnstown, Loveland, and Longmont, *Colorado*, to supply natural gas purchased from Colorado-Wyoming Gas Company in the cities and towns named, which provide for such preference "cut off" or "shut off" in substantially the same language as follows:

> The rates to be charged by the company for natural gas service to industrial users for heating, manufacturing, power and other purposes, may be lower and different from those charged for domestic purposes, and the company may contract with industrial users for the sale of such natural gas, provided that all such contracts contain a "cut off" clause which shall recognize the preferred rights of domestic users over industrial users, *(R. V. 1, pp. 150-152)*.

Deliveries under all industrial contracts are subject to curtailment or "shut off" to satisfy the demands of domestic consumers *(R. V. 1, p. 195)*.

"Shut off" or "curtailment" of consumers has occurred on numerous occasions in the operations of the Company *(R. V. 1, pp. 146-149, 152-157)*.

The Commission, with full knowledge thereof, gave no consideration and no effect to such facts and factors in its so-called "Allocation of Costs for Wyoming Company" *(R. V. 3, Comm. Ex. 227)*, adopted by the Commission in its order *(R. V. 1, pp. 59-60; R. V. 2, pp. 728-731, 786)* and approved by the Court of Appeals in its opinion herein *(R. V. 2, pp. 1112-1113)*.

(R. V. 1, pp. 183-186).

In the interest of brevity, such additional record facts relating to each of the several specific issues and questions presented herein, as appear to be necessary or desirable adequately to discuss such issues and questions, will be submitted in the attached brief argument, *post*.

"SPECIAL AND IMPORTANT REASONS" FOR GRANTING THE WRIT OF CERTIORARI HEREIN.

In conformity with the requirements of the applicable Rules of the Supreme Court, the substantial reasons (presented with greater particularity in the short brief of argument hereto attached), requiring this Court to issue the writ herein sought, as contended by petitioner, are summarized as follows:

I. The Federal Power Commission, in this case, has disregarded the law of the land, in that, among other things

(1) The Commission ignored the lawful ambit of its statutory authority over this petitioner in this rate case under the Natural Gas Act.

(2) The Commission in this case, as well as in other cases, has adopted as its sole guide and measure the so-called "prudent investment" rate base, contrary to law and the direct, specific and declared purpose, intent and enactment of the Congress, in the Natural Gas Act of 1938 and the Public Utility Act of 1935.

(3) The Commission in its opinion and order herein discarded relevant, uncontroverted and controlling evidence upon issues of material fact; indulged conjecture, guess and speculation in the absence of substantial or any evidence to permit the conclusions announced; and cast aside the great body of applicable judicial decision (much of which even *at this time*, has not been judicially condemned or overruled); and generally while adhering to the *forms* of "due process," erroneously has declared both the facts and the law to be in conformity with the non-existent statutory policies and objectives, which the Commission has undertaken to establish. As a result, the Commission action in this case was lawless, arbitrary and contrary to law.

II. The Circuit Court of Appeals for the Tenth Circuit, in this case, has disregarded the law of the land, in that, among other things:

(1) Said Court of Appeals "guided", so it is said, by the decisions of this Court in *Hope Natural Gas Company* and *Natural Gas Pipeline Company* cases, has held herein, despite errors of law and of fact disclosed in the record

and in some instances evident in opinion of the Court of Appeals, that under the alleged "statutory standard of 'just and reasonable'" and "the impact of the rate order," the Commission order is lawful and valid "in its entirety," contrary to law and the direct, specific and declared purpose, intent and enactment of the Congress, and particularly *Section 19 (b)* of the Natural Gas Act.

(2) Said Court of Appeals ignored the fundamental issue as to the extent of jurisdiction of the Commission over this petitioner in this rate case under the Natural Gas Act, which issue under law cannot be adjudicated by the Commission or disposed of by the rule of "total effect," "impact of the rate order" or "end product."

(3) Said Court of Appeals, as a court of review, did not predicate its opinion or render its decision by the determination of whether or not as to the several specific material issues of fact, "the findings of the facts" were "supported by substantial evidence," contrary to law and the direct, specific and declared purpose, intent and enactment of the Congress and particularly *Section 19 (b)* of the Natural Gas Act.

(4) Said Court of Appeals denied to this petitioner "due process of law," by reason of the matters and things aforesaid, and also by reason of the failure and refusal of that Court to decide this case separately from the *Canadian River Gas Company* and *Colorado Interstate Gas Company* cases, and specifically upon the issues herein presented, which independent issues were developed before the Commission and presented to said Court in separate hearings, upon a separate record and through separate briefs.

III. The Supreme Court of the United States, in the *Hope Natural Gas Company* and the *Natural Gas Pipeline Company* cases, *ante*, has disregarded the terms of the Natural Gas Act and other law of the land, and thereby has directly affected and substantially injured this petitioner in law and in fact, in that, to-wit:

(1) This Court has discarded and repudiated the principle of "fair value," contrary to law and the direct, specific and declared purpose, intent and enactment of the Congress,

in which body "all legislative power" of the federal government is "vested."

(2) This Court, by an attempted process of rationalization, has destroyed *Section 19(b)* of the Natural Gas Act, contrary to law and the direct, specific and declared purpose, intent and enactment of the Congress, whereby the right of appeal accorded by Congress has become virtually an empty right.

(3) This Court has declared and substituted, for the established presumption in favor of the administrative order on review, the requirement that "he who would upset the rate order carries the heavy burden of making a convincing showing that it is invalid *because it is unjust and unreasonable in its consequences*," contrary to law, and including particularly the Natural Gas Act.

(4) This Court, by its decisions aforesaid, in advance denies to this petitioner "due process of law," for as a result of said decisions the statutory review which Congress expressly gave amounts merely to a validation of the Commission theories, practices and orders, subject only to a vague and undefined right of protection against a newly devised and restricted concept of "confiscation," measured only by sounding phrases.

CONCLUSION.

For the foregoing reasons, more fully stated and considered in the brief and argument hereto attached, it is respectfully submitted that the petition for writ of certiorari should be granted.

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MEMORANDUM BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

This petition for writ of certiorari is addressed to issues which are fundamental and vital to this petitioner, a small "natural gas company" under the Natural Gas Act.

This case, however, actually is much more than a "rate case." It reflects and involves the development and application of social, economic and governmental theories and practices, neither contemplated or approved by Congress nor permitted by the Constitution. They amount to drastic and revolutionary changes in our American constitutional system, of vital concern to all citizens.

Our discussion of the several "Questions Presented" and of the "Special and Important Reasons" for certiorari herein will be comprehended under the following subject headings:

1. The extent geographically of the rate-regulatory jurisdiction of the Commission *over this petitioner in this rate case.*

2. The authority, duty and scope of judicial review under the Natural Gas Act.

3. The character of the legal presumption on review in favor of the Commission action.

4. The substantive standards by which the propriety and legality of the Commission action is to be measured by the Courts.

5. The Commission determination of "original cost" is not the true and entire original cost of petitioner's properties and business.

6. The Commission fixation of "service life" is not supported by "substantial evidence."

7. The rejection by the Commission of all "going concern value" is contrary to the evidence and erroneous in law.

8. The Commission so-called "allocation of cost of service" is without support of "substantial evidence" and in disregard of law.

9. The substance of "due process" under the Fifth Amendment to the Constitution has been denied to this petitioner by the Commission and the Court of Appeals.

1. The Extent Geographically of the Rate-Regulatory Jurisdiction of the Commission over this Petitioner.

The position of this petitioner is that the one and *only* sale for resale by it in *interstate* commerce *(Sec. 1(b))* of the Act, *Appendix A, p. 1-a, post)* that is, "the sale of natural gas across state lines," *(Federal Power Comm. v. Hope Natural Gas Co.*, 320 U.S. 575, 64 Sup. Ct. 281, 292) is at the "city gate," Cheyenne, Wyoming; and that *all* "city-gate" sales for resale in Colorado are made in *intrastate* commerce. See, *Appendix B, p. 5-a, post.*

This issue is neither considered nor resolved by the Court of Appeals in its opinion. The action of the Commission in summarily disposing of this question by merely assuming rate-regulatory jurisdiction over *all* operations of Colorado-Wyoming Company, in Colorado as well as at the "city gate," Cheyenne, Wyoming, is adopted in silence by that Court. This petitioner is entitled upon this issue, as well as upon other issues in the case, to a separate, direct and specific judicial consideration and determination thereof, under the terms of the Natural Gas Act, the facts in this record and other controlling law.

The law is settled that "The determination of the extent of authority given to a delegated agency by Congress is not left for the decision of him in whom authority is vested." *(Addison v. Holly Hill Fruit Products, Inc.* (1944), ... U.S. .....; 64 Sup. Ct. 1215-1220).

Colorado-Wyoming Company purchases its gas supply *in Colorado* (at Littleton) from Colorado-Interstate Gas Company. Such *completed* sale by the latter named company to petitioner is subject to the rate-regulatory authority of the Commission, and that authority has been exercised by the Commission *(Colorado Interstate Gas Co. v. Federal Power Commission, et al.*, 142 F. (2d) 943). The systems of the two companies are connected solely for the purposes of such sale, purchase and delivery. The two systems, however, are not "integrated," nor in any manner combined.

They are entirely independent in management, control and operation. Upon this, the record is clear. This is admitted by the Commission in its opinion *(Op. R. V. 1, p. 79)* and by the impressive fact that throughout the proceedings before the Commission and the rate determinations made by it, Colorado-Wyoming Company was of necessity considered and dealt with as wholly separate from and independent of Colorado Interstate Gas Company (save only that the Commission, unsupported by fact or law, resorted to the fiction of "integration" for purposes of its "allocation of cost," so-called). Colorado-Wyoming Company, then an operating company, was no part of nor in any manner considered in the agreed plan of development *(R. V. 3, Ex. I, p. 7)* of the Texas pipeline to Denver *(Op. of Ct., pp. 3-5)* but became merely a purchaser of such gas at a later date because of the unexpected exhaustion of the Wellington Colorado Field *(Op. of Ct., V. 2, p. 1096; Comm. Ex. 51, R. V. 3, pp. 1-6)*. These are the facts, uncontroverted in the record. See, Summary Statement, *ante*.

To buttress its assumption of enlarged geographic jurisdiction, the Commission relied upon *Illinois Natural Gas Company v. Central Illinois Public Service Co., et al.*, 314 U.S. 498, 62 Sup. Ct. 381. The contention of the Commission is not supported in the later opinion of this Court in *Federal Power Commission, et al. v. Hope Natural Gas Co.*, 320 U.S. 575, 64 Sup. Ct. 281.

Therein this Court differentiates and distinguishes the restricted ambit of rate-making authority under *Sections 4 and 5* of the Act, and the *unrestricted* authority of the Commission with respect to extension or abandonment of facilities and service and certificates of public convenience and necessity under *Section 7* of the Act. It is entirely clear that these two Commission authorities, independently delegated by Congress, stem from separate and different basic concepts as this Court points out with particularity in distinguishing *Illinois Natural Gas Company v. Public Service Co., supra.* *(Federal Power Comm. v. Hope Natural Gas Co., 320 U.S. 575; 64 Sup. Ct. 281, 291-292)*.

Under *Section 7* the general supervisory jurisdiction of the Commission reaches every "natural gas company" as defined by the Act. Colorado-Wyoming Company concededly

is a "natural gas company" under the Act, that is, "engaged in the transportation of natural gas interstate commerce, or the sale in interstate commerce of such gas for resale." But the rate-regulatory jurisdiction of the Commission under *Sections 4 and 5* is measured and limited by and to actual *interstate* sales for resale *(Sec. 1(b))*, or, as stated by this Court in the *Hope Natural Gas Co.* case, "sale of natural gas across state lines." See also, *Jersey Central Power & Light Co. v. Federal Power Commission*, 319 U.S. 61, 63 Sup. Ct. 953, 960.

The decision in the *Hope Natural Gas Co.* case obviously is no authority whatever for the conclusion of the Commission that because of the connection of the pipeline system of Colorado-Wyoming Company with that of Colorado Interstate Gas Company, the *intrastate* sales for resale of this petitioner in Colorado become sales in interstate commerce and, therefore, are "subject to the rate-making powers of the Commission." Both the Congressional Committee Report and this Court are in agreement as to the "basic purpose" of the Act, which was "to occupy" a limited field, particularly defined in the Committee Report upon which Congress relied and acted. To accomplish this the bill "was designed" and "so drawn" to take "no authority from State Commissions" and "in no manner usurp state regulatory authority." And, declare both Committee Report and this Court, there is "nothing novel in its provisions." To the States, says Congress, this Court concurring, actually were left all problems of local rate regulation.

The authorized representatives of the Commission who sponsored before Congress the Commission-drafted Federal Power Act, the companion act to the Natural Gas Act, time after time protested that "intrastate services and rates" were not to be subject to federal rate regulation; that "the bill only applies to interstate rates at wholesale in interstate commerce"; that, if part of the business was intrastate and part interstate, the Commission would have rate-regulatory jurisdiction over that part only which was "transmitted and sold in interstate commerce." Congress was told these things and also was given further specific assurance that no jokers of any kind were involved, either of language or of ulterior motives *(Appendix C, pp. 12-a, 14-a, 15-a, 17-a, 18-a, post)*.

We are told, both by Congress (H. Rep. No. 709, 75th Cong., 1st Sess., approved by Senate Rep. No. 1162, 75th Cong., 1st Sess., 1937) and this Court *(Federal Power Comm. v. Hope Natural Gas Co.*, 64 Sup. Ct. 281, 291), that the Natural Gas Act provides "for regulation along *recognized* and more or less *standardized* lines"; that there is "*nothing novel* in its provisions"; that "Sec. 4(a) and Sec. 5(a) (setting up the procedure for rate regulation) contain only the *conventional* standards of rate making for natural gas companies"; and that "the basic purpose" of the Act is "to occupy this field in which (Note: referring to *Missouri v. Kansas Gas Co.* (1924), 265 U.S. 298 and *Public Service Comm. v. Attleboro Steam and Electric Co.* (1927), 273 U.S. 83) the States may not act."

Despite the foregoing professions, the reports of the congressional committees *(Hope Natural Gas Company* case p. 291 of 64 Sup. Ct.), and the terms of *Section 1(b)* of the Act, which do not require or even permit an excursion into the field of construction to ascertain congressional intent or meaning *(Addison v. Holly Hill Fruit Products, Inc.*, ... U.S. ....., 64 Sup. Ct. 1215, 1220-1221), the Commission manages to find a way to enlarge its rate-regulatory authority over this petitioner. It simply assumes that *Colorado* "sales for resale" are in "*interstate* commerce" after having regulated the rates of the *completed* "sale for resale" by Colorado Interstate Gas Company to this petitioner at the Arapahoe Colorado measuring station. Additionally, by its order it regulates *separately* the rates and charges of this petitioner, as wholly independent of and unrelated to Colorado Interstate Company. But for purposes, first, of jurisdiction, and, second, of allocation, it treats petitioner as part and parcel of Colorado Interstate Company. Thus in this, as in numerous other respects, rationalization by the Commission becomes merely a device to an end—and that end is whatever the desired objective of the Commission may be.

It cannot be questioned but that the area of the rate making authority of the Commission is strictly limited and intended to be so. The restricted ambit of such power, declared in both affirmative and negative language *(Sec. 1 (b))* must control the Commission and must be enforced by the

courts if Congress is to continue to perform the legislative functions delegated to it. Whatever broad powers the Commission may have *within* the ambit of its statutory authority, they can afford neither justification nor excuse for the assertion by it of enlarged and forbidden boundaries and frontiers of power.

Yet the Commission, with the approval of the Court of Appeals, has asserted rate-regulatory jurisdiction over local Colorado sales for resale by petitioner, which buys all of its natural gas requirements *locally in Colorado.* This petitioner, moreover, is neither an "associate" of or "integrated" with Colorado Interstate Gas Company, in fact or in law, but merely one of its "customer companies" *(Op. Ct., R V. 2, p. 1096).* The judgment of every administrative agency or court should be so schooled that it is not fooled. As a simple and practical matter and one of easy and common understanding, the sale by this petitioner of natural gas for resale, at the "city gate" Greeley, Colorado, to the Greeley Gas and Fuel Co., for instance, is a purely local sale, clearly subject to the rate-regulatory jurisdiction of the State of Colorado, and obviously intended and declared by Congress to be withheld from the Commission. The Littleton "gate rate" *necessarily* evidenced *the consummation* of the sale, purchase and delivery of natural gas to petitioner *after completion* by Colorado Interstate Gas Company of its interstate transportation thereof. The Commission position is usurpation, and yet that Court by default has permitted that Commission position to prevail.

The Act expressly withholds *all* control over intrastate sales for resale, in addition to all "direct" sales. It is not to the point that Congress possibly might have conferred full power of rate control over the local Colorado sales for resale, as incidental to the major grant of authority—it did not do this. If the Colorado-Wyoming Company pipeline system did not cross the state line into Wyoming, the Colorado business would be beyond peradventure local. The Colorado business does not become national or interstate or constitute "the sale of natural gas across state lines," and subject to Commission rate-regulatory control, merely *because* the Cheyenne "city-gate" contract of "sale for resale"

made and consummated in *Wyoming* is subject to Commission rate-regulatory jurisdiction. *Smith v. Illinois Bell Telephone Co.*, 282 U. S. 133, 51 Sup. Ct. 65, 70, *et seq.*

The substantial consequences of the error here involved are clearly shown by the record. In 1939, the test year adopted by the Commission, the total sales for resale were 1,706,000 M.c.f., producing $579,000, of which sales for resale at the Cheyenne, Wyoming, "city gate" were 494,000 M.c.f., producing $182,000. Such Wyoming sales for resale were less than one-third of the total sales for resale both in quantities of gas sold and revenue derived therefrom *(R. V. 3, Ex. 245, St. No. 4 and St. No. 8)*. By the Commision order of reduction in the rates of "sales for resale" (erroneous also in other respects), $58,000 was allocated to Wyoming "sales for resale" and $61,000 to Colorado "sales for resale". *(R. V. 4, p. 85)*.

Whatever may be the limits of the doctrine of "end result," "rate impact" and ultimate "consequences," announced by this Court in the *Natural Gas Pipeline Company* and *Hope Natural Gas Company* cases, hereinafter considered, that doctrine cannot by-pass or dispose of jurisdictional issues. Congress either undertook to give the Commission rate-regulatory jurisdiction over the *Colorado intrastate* "sales for resale" of this petitioner, or it did not.

That question can be decided in favor of the actual assumption of such jurisdiction by the Commission only by a determination that such "sales for resale" are "interstate" in fact and in law. It is not enough, *under the terms of the Natural Gas Act*, to assert that such sales may "affect" interstate commerce, they themselves must be interstate commerce which they are not.

If the Federal Power Commission follows any rule of statutory construction whatever as a guide to its action, it is "that language granting powers is to be liberally construed, and that language of restriction is to be narrowly and technically construed." This, declared that great judge, *Mr. Justice Brewer*, "would be a strange rule of construction." *(Fairbanks v. United States* (1901), 181 U. S. 283, 21 Sup. Ct. 651).

The unequivocal language of the Act granting and withholding rate-regulatory authority is: "The provisions of this Act shall apply * * * to the sale in interstate commerce of natural gas for resale for *ultimate* public consumption * * * but shall not apply to any other * * * sale of natural gas * * *" *(Sec. 1(b)).*

2. The Authority, Duty and Scope of Judicial Review under the Natural Gas Act.

The scope of the authority and *duty* of judicial review under the Natural Gas Act is governed and controlled by the terms and provisions of that Act. The determination of that scope admittedly is a legislative function, and Congress, in which body "all legislative powers" of the federal government "are vested", *has acted.* Neither the Commission nor the Courts have any authority to question or overrule that legislative policy and action, nor are the Commission and the Courts concerned, within the authorized spheres of their respective powers, as to whether Congress was required to accord the right of review which it in fact granted. The only inquiry is: What was that Congressional action? What review did Congress provide?

1. The Act *(Appendix A, p. 2-a, post)* specifically requires "a hearing," as a condition precedent to action, which hearing under our system of government is a term of substance, and clearly imposes the burden of proof on the Commission itself *(Op. Comm. R. V. 1, p. 79).* This apparently is recognized by the Court of Appeals *(Op. Ct., R. V. 2, pp. 1104-5).*

Moreover, there never has been any doubt about the meaning of the statutory language "whenever the Commission after a hearing * * * shall find that any rate * * * is unjust, unreasonable * * * *(Sec. 5 (a)).* *Mr. Justice Brandeis* in a confiscation case, speaking for this Court, declared:

> "Congress by using the phrase 'whenever the Commission is of opinion, after hearing', prescribed quasi judicial action. Upon application of a carrier, the Commission must form a judgment whether the acquisition proposed

will be in the public interest. It may form this judgment only after hearing. The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence introduced or to make an essential finding without supporting evidence is arbitrary action."

The Chicago Junction Case, 264 U. S. 258, 265; 44 Sup. Ct. 317, 319-20.

2. The foundation of the Commission "rate making function" is largely factual as pointed out by this Court in the *Hope Natural Gas Co.* case *supra (Secs. 6, 8, 9, 10 and 14)*.

3. Hearings, appropriate records thereof, and governing rules of procedure, contemplate a full and complete trial of all relevant issues of fact and law (*Secs. 15 and 16*).

4. The provision for rehearing before the Commission provides that such application "shall set forth *specifically* the ground or grounds upon which such application is based," not merely a general objection that the finding of "unreasonableness" is "arbitrary" (*Sec. 19 (a)*). Thus the Commission is given opportunity to correct its errors, on the assumed concept that "true wisdom always is discreet, and not ashamed of wise retreat."

5. The judicial review, predicated *solely* upon the "transcript of the record" before the Commission (*See Appendix A, pp. 3-a, 4-a, post*), provides: (1) "No objection to the order of the Commission shall be considered by the Court unless such objection shall have been urged before the Commission in the application for rehearing * * *," which means that all such objections so urged shall be considered by the reviewing Court; (2) "The finding of the Commission as to the *facts*, if supported by substantial evidence, shall be conclusive," or conversely, if not supported by "substantial evidence," cannot stand; (3) a party, on proper showing, may be permitted by Court order "to adduce additional evidence" before the Commission; (4) in such event, "The Commission may modify its *findings as to the facts* * * * and it shall file with the Court *such modified or new findings*, which if supported by substantial evidence shall be conclusive *and its recommendation*, if any, for the modification or setting aside

of the original order;" and (5) "The judgment and decree of the Court, affirming, modifying or setting aside, *in whole or in part*, any such order of the Commission, shall be final • • •" *(Sec. 19 (b))*. Herein *in plain language* the statute provides that usual and ample statutory review of rate making orders of administrative agencies, developed and established by long legislative and judicial practice and the undoubted applicable law of the land at the time of the passage of the Natural Gas Act.

6. The Congressional purpose and intent is made clear beyond any doubt. As declared by this Court in the *Hope Natural Gas Co.* decision, "The Committee Report stated that the *Act* provided 'for regulation along *recognized* and more or less standardized lines' and that there was '*nothing novel in its provisions*' H. Rep. No. 709, *supra*, p. 3. • • • Sec. 4 (a) and Sec. 5 (a) contain only the conventional standards of rate making for natural gas companies." (64 Sup. Ct. at page 294.) (Emphasis added.)

7. What then was the state of the law with respect to the scope of review of rate-regulatory orders of administrative agencies, *at the time* of the passage of the Federal Power Act (1935) and the Natural Gas Act (1938).

The case of *St. Joseph Stock Yards Co. v. United States* (1936), 298 U. S. 38, 56 Sup. Ct. 720, embodies a complete discussion of the law of the land, by *Mr. Chief Justice Hughes* (298 U. S. 51) and by *Mr. Justice Brandeis* (298 U. S., pp. 74-75). This Court in that case was reviewing an order of the Secretary of Agriculture fixing rates under authority of the Packers and Stockyards Act (1921), (42 Stat. 159 7 U. S. C., Secs. 181-229), on suits to restrain and annul such order in accordance with the provision which Congress had made for reviewing orders of the Interstate Commerce Commission.

Speaking for the Court the *Chief Justice* declared (pp. 725-726):

> "When the Legislature appoints an agent to act within that sphere of legislative authority, it may endow the agent with power to make findings of fact which are conclusive, provided the requirements of due process which are specially applicable to such an agency are met, as in

according a fair hearing and acting upon evidence and not arbitrarily. * * * In such cases the judicial inquiry into the facts goes no further than to ascertain whether there is evidence to support the findings and the question of the weight of the evidence in determining issues of fact lies with the legislative agency acting within its statutory authority."

* * * * *

"Legislative declaration or finding is necessarily subject to independent judicial review upon the facts and the law by courts of competent jurisdiction to the end that the Constitution as the supreme law of the land may be maintained. Nor can the legislature escape the constitutional limitation by authorizing its agent to make findings that the agent has kept within that limitation. * * * Under our system there is no warrant for the view that the judicial power of a competent court can be circumscribed by any legislative arrangement designed to give effect to administrative action going beyond the limits of constitutional authority."

Mr. Justice Brandeis, who certainly cannot be charged with ever overstating or enlarging the *necessary and minimum* scope of review, even in a confiscation case, declared, in his concurring opinion (pp. 735-736):

"* * * Is there anything in the Constitution * * * that prohibits Congress making findings of fact by a highly trained and especially qualified administrative agency likewise conclusive, provided they are supported by substantial evidence?"

* * * * * *

"An order of the Secretary may, of course, be set aside for violation of the due process clause by prescribing rates which, on the facts found, are confiscatory; for the order of an administrative tribunal may be set aside for any error of law, substantive or procedural. * * * Moreover, where what purports to be a finding upon a question of fact is so involved with and dependent upon questions of law as to be in substance and effect a decision of the latter, the Court will, in order to decide the legal question, examine the entire record, including the evidence if neces-

sary, as it does in cases coming from the highest court of a state. * * * It may set aside an order for lack of findings necessary to support it, * * * or because findings were made without evidence to support them, * * * or because the evidence was such 'that it was impossible for a fair-minded board to come to the result which was reached.' * * * or because the order was based on evidence not legally cognizable, * * * or because facts and circumstances which ought to have been considered were excluded from consideration, * * * or because facts and circumstances were considered which could not legally influence the conclusion, * * * or because it applied a rule thought wrong for determining the value of the property. * * * These cases deal with errors of law or irregularities of procedure."

8. In view of all of the foregoing, it cannot be held, that the duty of a statutory review can be discharged in this case by a mere process of rationalization and a blanket finding that the *ultimate conclusion* of "unreasonableness" *(Comm. Order, R. V. 1, pp. 94-96)* is not arbitrary in its "total effect." It is to be observed that the Commission after making some eleven findings of assumed fact (there are no findings with respect to several material issues) declares: "*Therefore* the rates * * * received by Wyoming Company * * * are unjust, unreasonable and excessive." This conclusion ostensibly is *predicated* upon the opinion generally and the so-called Findings and Conclusions Nos. 1 to 11, inclusive, whether or not supported by the record, and *excludes* issues of material fact with respect to which there are no findings either in the order or the opinion of the Commission.

9. Yet this Court in the *Natural Gas Pipeline Company* case (315 U.S. 575, 586; 62 Sup. Ct. 736, 743) declared:

"The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances. Once a fair hearing has been given, proper findings made and other statutory requirements satisfied, the courts cannot intervene in the absence of a clear showing that the limits of

due process have been over-stepped. If the Commission's order, as applied to the facts before it and viewed in its entirety, produces no arbitrary result, our inquiry is at an end."

And, in the *Hope Natural Gas Company* case, at pages 287 and 288 of 64 Sup. Ct., we find the following:

"And when the Commission's order is challenged in the courts, the question is whether that order 'viewed in its entirety' meets the requirements of the Act. * * * Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling. * * * It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable judicial inquiry under the Act is at an end."

What then do these quoted declarations of this Court mean? The answer is immediately evident from the two opinions in question.

The appraisal of "total effect" or "end result" is not based on the record and the facts and issues therein contained, *but whether, in the opinion of the Court*, the utility, as a result of the order, can thereafter survive and continue to do business. This is not even the usual and established test of confiscation, as we have seen.

Neither the Natural Gas Act nor the earlier decisions of this Court afford the slightest justification for or give any intimation whatever that the statutory *judicial* review, upon the record developed under the requirements of *Section 19*, and *measured by the statutory direction to the courts*, that "the finding of the Commission as to the facts" must be "*supported by substantial evidence*" is a barren right. Let there be no misunderstanding, the issues herein presented do not reflect mere "theory", "infirmities", "method" or "errors of reasoning"; they involve those fundamental matters and that very course of procedure detailed by *Mr. Justice Brandeis, supra*, as rendering an administrative order *totally invalid*, even in a confiscation case.

The revolutionary character and scope of the position of this Court, reflected in its opinion in the *Hope Natural Gas Company* case, *supra*, is made manifest by reference to the

recent opinion of the Circuit Court of Appeals for the Eighth Circuit in the *Panhandle Eastern Pipe Line Company* case, wherein is found the following:

"The opinion of the Supreme Court in the *Hope Natural Gas Company* cases (1944), 320 U.S. 591, 88 L. Ed. 276, 51 P.U.R. (n,s.) 193, 64 S. Ct. 281, indicates to us that, aside from questions relating to procedural due process and to jurisdiction, a reviewing court may interest itself only in the effect of the Commission's order. *The court cannot concern itself with the Commission's choice of formulae or the propriety of the methods employed by it in reaching its conclusion, but only with the consequences of the order made.* If the effect of the order is to deny to the utility a return sufficient reasonably to meet its necessities and to enable it to continue to render adequate public service, the order is arbitrary and confiscatory and may be set aside. *It seems apparent that the Supreme Court is presently of the opinion that, within broad limits, the Federal Power Commission should be freed from judicial interference in regulating rates of natural gas companies. It is evidently no longer necessary for a reviewing court to consider many of the doubtful and debatable questions which ordinarily arise in every rate case, such as:* whether replacement or reproduction cost less observed depreciation, or prudent investment, or historical cost, shall be used as a rate base; whether proper allocation of revenues which are subject to regulation and revenues which are not subject to regulation has been made by the Commission; *whether the cost or value of items of property which, for reasons deemed sufficient by the Commission, have been excluded by it from the rate base should have been included; whether the Commission has given due consideration to every pertinent fact; and whether the reasoning of the Commission which underlies its final determination is sound or unsound.*" (Emphasis added).

Panhandle Eastern Pipe Line Co. v. Federal Power Comm., 143 F. (2d) 488, 54 P.U.R. (n.s.) 26, 36-37.

In the instant case, the Court of Appeals in considering the issue of allocation, after ignoring the legal requirement that there be an allocation of *property*, details other objec-

tions to the Commission "Allocation of Cost of Service", so-called, and assuming the validity of such objections, declared:

"But, assuming that the requisite separation may be accomplished by an allocation of cost of service, the method used by the Commission is said to be erroneous. It is *argued* among other things that it *assumes* that all of the property is used in common in the conduct of all business *whereas a large portion is used exclusively in the regulated portion, another part is used exclusively in the unregulated portion, and only a part is used in common in both businesses;* that in respect to the property which is used in common for both businesses, it fails to give consideration to the priority or preferential use of such property in supplying gas for domestic consumption as against unregulated business, and ignores actual peak demands and load factors; *that it operates to minimize all costs, produces apparent cost much less than actual cost, and shifts cost from regulated to unregulated business; and that it is unsound in fact and law.* It may be conceded, without deciding, that the *method* is not *free from defects* or imperfections in *all* its aspects. But even so it cannot be said that as a consequence, the impact of the orders of reduction, each in its totality, produces arbitrary results or oversteps the bounds of due process. Therefore the orders are not open to further judicial inquiry on these grounds. *Federal Power Commission v. Natural Gas Pipeline Co., supra; Federal Power Commission v. Hope Natural Gas Co., supra.*" (Emphasis added.)

(R. V. 2, p. 1114)

Colorado Interstate Gas Co., et al. v. Federal Power Commission, 142 F. (2d) 943, 959.

If, as these Courts declare on the authority of this Court's opinion in the *Hope Natural Gas Company* case, "items of property" may be excluded from the rate base "*for reasons deemed sufficient by the Commission,*" or if applicable and controlling principles of law may be disregarded *as a matter of uncontrolled and uncontrollable discretion on the part of the Commission*, then it is obviously and utterly impossible for any litigant to make a "convincing showing" or any showing that the order is invalid under any standard or test.

be that test confiscation, lawlessness or unreasonableness in its "consequences."

Argument is not required to show the direct conflict between the "new order of things" disclosed in the *Hope Natural Gas Company* case and "the law of the land" expounded by *Mr. Chief Justice Hughes* and *Mr. Justice Brandeis* in the *St. Joseph Stock Yards Company* case, *supra*. Under the "total effect," "end result" theory, courts of review are cast adrift upon an uncharted sea and directed to guess whether an undefined and unmeasured "impact" produces unjust and unreasonable "consequences," which also are undefined and unmeasured. Such judicial doctrine undermines the very foundations of the Constitution itself.

The established and accepted scope of review (aside from the *Hope Natural Gas Company* case) comprehends compliance with the following: (1) "He who decides must hear," that is, must have an open mind to the issues in the particular case, unhampered by any predetermination or by nonexistent statutory theories, policies and objectives; (2) Constitutional rights must be regarded, not explained away; (3) Statutory powers, duties and limitations must be observed; and (4) the specific evidentiary foundations for the findings, conclusions and order must be supported in the record. (See *Securities and Exchange Comm. v. Chenery* (1943), 317 U.S. 80, 63 Sup. Ct. 454, 459, 462; *United States v. Carolina Freight Carriers Corp.* (1942), 315 U.S. 475, 489, 62 Sup. Ct. 722, 730; *Federal Power Comm. v. Natural Gas Pipeline Co.* (1942), 315 U.S. 575, 586, 62 Sup. Ct. 736, 743; *Addison v. Holly Hill Fruit Products, Inc.* (1944), ... U.S. ....., 64 Sup. Ct. 1215, 1220).

The decisions quoted and cited *supra*, hold that if the record discloses that the Commission has proceeded without supporting evidence or without warrant of law, no conclusion which the Commission reaches upon such improper basis can convert that wrong into right. It is only after the several specific determinations of material issues of fact have been found to be supported by "substantial evidence" and in conformity with controlling law that the court reaches the realm of "total effect" or "entirety." (*Los Angeles Gas & Elec. Corp. v. Railroad Comm.*, 289 U.S. 287, 53 Sup. Ct. 637).

"Total effect," "end result," "rate impact," and "consequences," unmeasured by material facts or controlling law, are not "due process," even in a "confiscation" case. Furthermore, if courts of review are not concerned with particular issues as such, there is no occasion at all for the statutory review for relief from "confiscation" is still available through courts of equity. The salutary principle, that it is an error of law to render a decision predicated upon findings not supported by "substantial evidence," is the law declared in the Natural Gas Act, in conformity with the established and heretofore settled law of the land.

The terms "total effect," "end result," and "rate impact" are used to describe the method of thus reducing the *statutory* review to an idle gesture. Several of the justices protested without avail against this method of determining the validity of the Commission order on review, as being without control, measure, guide or standard of any kind. But strangely enough, none of the justices examined the Congressional action which established a clear and specific standard and requirement, to-wit: that "the findings as to the facts" must be supported by "substantial evidence." (Natural Gas Act, *Sec. 19(b)*)

"Findings as to the facts" and ultimate conclusions such as the conclusion of "unreasonableness" are quite different and always heretofore have been clearly differentiated by this Court and all other courts, federal and state. (See, *Baumgartner v. United States* (1944), 64 Sup. Ct. 1240.) Conclusions are of value when they are proven, and only then. As a matter of fact, that wide difference between facts and conclusions currently is expressly acted upon in the cases cited and in other circumstances under similar or identical statutory reviews.

The doctrine now advanced by this Court, despite the Act and such controlling law, would limit judicial review to the question of whether or not the Commission acted arbitrarily, in the broad and unrestricted opinion of the courts, losing sight of the record and the rules that the courts may always decide whether the Commission has acted within its prescribed legal limitations, and has observed the rules of law governing its action. It has never been the law that a rate-making authority may, by making a finding that certain

rates are "unreasonable," preclude judicial review of the foundations for and legality of such a finding, which is a conclusion merely.

Apparently to buttress the idea of "total effect" and "in its entirety," this Court, referring back to the *Natural Gas Pipeline Company* case, declares in the *Hope Natural Gas Co.* case: "Its (the Commission's) rate-making function, moreover, involves the making of 'pragmatic adjustments.'" "Pragmatic" is defined as "dealing with practical values or consequences." Presumably, as applied to the determination of a rate base, it would mean adjustment of or departure from the rigid Commission "original cost" formula. However, there is no way of knowing, for the Commission has not to date made any such adjustment or departure, in the interests of common fairness or otherwise. So too, we do not have any knowledge of the character, function, purpose or effect of the "pragmatic adjustments" referred to by this Court, or of the guides, standards or measures requiring them or by which they are to be ascertained. It appears, however, from the opinions of this Court in question that the entire matter of "pragmatic adjustments" is to be left to the unrestrained and unreviewable "discretion" of the Commission, and, thus, for all practical purposes, the "inquiry is at an end" before the case ever reaches the appellate court.

10. The evidence is accumulating that this Court, *not Congress*, is developing special rules and exemptions applicable to the review of orders of the Federal Power Commission. Such special treatment in support of the orders of that Commission is a clear departure from the long established rule currently applied with respect to other administrative orders, under identical statutory reviews (*Securities & Exchg. Comm. v. Chenery Corp.* (1943) 317 U. S. 80, 63 Sup. Ct. 454, 462; *United States v. Carolina Freight Carriers Corp.* (1942) 315 U. S. 475, 488-489; 62 Sup. Ct. 722, 729-730; *Eastern-Central M. C. Ass'n v. United States* (1944), 64 Sup. Ct. 499, 507-508; *Interstate Commerce Comm. v. Jersey City* (1944), 64 Sup. Ct. 1129).

As pointed out, the Congress evinced no intention whatever to delegate a freedom and immunity from review to the

Federal Power Commission not possessed by other administrative bodies, such as the Securities and Exchange Commission, the Interstate Commerce Commission, and the Secretary of Agriculture under the Packers and Stockyards Act. In fact, as we have seen, the Congress clearly and expressly declared it intended not to depart from the then "recognized," "standardized" and "conventional" law on the subject. Congress provided the same judicial review accorded with respect to the action of other federal administrative agencies, and neither the Commission nor the courts are warranted in departing therefrom because of doubts respecting, or disagreement with, the legislative course Congress has chosen.

The "Court Review of Orders" of the Securities and Exchange Commission is authorized by *Section 24 (a)* of the "Public Utility Holding Company Act of 1935" (U. S. C. A., Title 15, Sec. 79x; C. 687; 49 Stat. 834). *Section 24 (a)* of that Act is *identical* in language and in punctuation with *Section 19 (b)* of the Natural Gas Act. They are the same, word for word. Yet this Court has construed and applied these two *identical* review sections as totally different to produce entirely contrary results. As to the scope of review, the *Natural Gas Pipeline Company (1942)* and *Hope Natural Gas Company (1944)* cases are directly contrary to *Securities and Exchange Comm. v. Chenery Corporation (1943)*, 317 U. S. 80, 63 Sup. Ct. 454. In the *Chenery* case nothing is said about "total effect," "end result" or "unjust or unreasonable in its consequences." That opinion was not molded by the doctrine of administrative finality and judicial impotency, nor saturated with social, economic or governmental objectives and policies not authorized by Congress.

In the *Chenery* case (317 U. S. 80, 94-95, 63 Sup. Ct. 454, 462) this Court, *speaking through Mr. Justice Frankfurter*, says:

> "Congress has seen fit to subject to judicial review such orders of the Securities and Exchange Commission as the one before us. That the scope of such review is *narrowly circumscribed* is beside the point. For the courts cannot exercise their *duty of review unles they are advised* of the

considerations underlying the action under review. If the action rests upon an administrative determination—an exercise of judgment in an area which Congress has entrusted to the agency—of course it must not be set aside because the reviewing court might have made a different determination were it empowered to do so. But if the action is based upon a determination of law as to which the reviewing authority of the courts does come into play, an order may not stand if the agency has misconceived the law. In either event the orderly functioning of the process of review requires that the grounds *upon which the administrative agency acted be clearly disclosed and adequately sustained.* 'The administrative process will best be vindicated by clarity in its exercise.' Phelps Dodge Corp. v. National Labor Relations Board, 313 U. S. 177, 197, 61 S. Ct. 845, 853, 85 L. Ed. 1271, 133 A. L. R. 1217. What was said in that case is equally applicable here: 'We do not intend to enter the province that belongs to the Board, nor do we do so. All we ask of the Board is to give clear indication that it has exercised the discretion with which Congress has empowered it. This is to affirm most emphatically the authority of the Board.' Ibid. Compare United States v. Carolina Carriers Corp., 315 U. S. 475, 488, 490, 62 S. Ct. 722, 729, 730, 86 L. Ed. 971. In finding that the Commission's order cannot be sustained, we are not imposing any trammels on its powers. We are not enforcing formal requirements. We are not suggesting that the Commission must justify its exercise of administrative discretion in any particular manner or with artistic refinement. We are not sticking in the bark of words. We merely hold that an administrative order cannot be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which its action can be sustained." (Emphasis added.)

This language is molded by the principle of the supremacy of the enacted law of the land and its application to both Commission and Court. The recognition of judicial duty here apparent is not to be found in the *Natural Gas Pipeline Company* and *Hope Natural Gas Company* opinions. It is not conceivable that the Congress intended these two *identical* review sections to have different meanings and

variant effects. This is buttressed by the additional fact that the "Federal Power Act" (1935) was enacted at the same time as and in conjunction with the "Public Utility Holding Company Act of 1935," under the common title of "Public Utility Act of 1935." *Section 313 (a)*, entitled "Court Review of Orders" in the Federal Power Act (U. S. C. A. Title 16, Sec. 825-l C. 687, Title II, Sec. 213, 49 Stat. 860) also is *identical*, word for word, with the two review sections under consideration.

Yet, under the Holding Company Act, there is a review, while under the Natural Gas Act there is no review. Such appears to be the kind of "day in court" on review which has emerged from a statute that Congress and this Court solemnly declare contains "nothing novel in its provisions." Inexplicable!

If this be true, from what reservoir of constitutional power does this Court clothe itself with authority thus to deny that measure of review granted by the Congress?

3. The Character of the Legal Presumption on Review in Favor of the Commission Action.

This Court declared in its *Hope Natural Gas Company* opinion (64 Sup. Ct. 281, 288):

> "And he who would upset the rate order under the Act carries the *heavy* burden of making a *convincing showing* that it is invalid, *because it is unjust and unreasonable in its consequences.*" (Emphasis added.)

Apparently this is an adaptation and radical change and enlargement of the statement of *Mr. Chief Justice Hughes*, speaking for this Court, in *St. Joseph Stock Yards Co. v. United States*, 298 U. S. 38, 53, 56 Sup. Ct. 720, 726:

> "We have said that 'in a question of rate making there is a strong presumption *in favor of the conclusions reached* by an experienced administrative body after a full hearing.' * * * The established principle which guides the court in the exercise of its judgment on the entire case is that the complaining party carries the burden of making a convincing showing * * *" (Emphasis added.)

The last quoted declaration of this Court is understandable. On a review, "on the record" made before the Com-

mission, this Court repeatedly has held that the determinations to be made are whether the "conclusions reached" can be supported by the record and are in conformity with controlling law, even in a confiscation case. It is "beside the point," as stated in the *Chenery* case, *supra*, "that the scope of such review is circumscribed."

"Conclusions reached" and "consequences" are fundamentally different ideas. Then what about the "convincing showing" or proof, that the order is invalid "because it is unjust and unreasonable *in its consequences*"? What is the procedure by which such showing or proof is to be made? "If a thing can be done, an ingenious man can tell how to do it." Certainly no proof outside the record can be adduced before the Court of Appeals or this Court. Such being the fact, the ultimate "consequences" of the Commission action must appear from the record before the Commission. How is the "convincing showing" or proof to be incorporated into that record? This can be done, if possible at all, only if the utility, *before* that record is complete and closed and, of course, *before* the order is made, be required to anticipate an adverse order and additionally to know precisely the substance of that adverse order. For example, being in a state of such anticipation, if the utility offers proof of prior losses to offset the prior earnings theory featured by this Court in its opinion in the *Hope Natural Gas Company* case, such evidence would not be admissible (*Los Angeles Gas and Elec. Corp.*, 289 U.S. 287, 313, 53 Sup. Ct. 637).

Moreover, the overall appraisal on review of the "total effect," "end result" and "consequences" is the function of the Court, according to the opinion in the *Hope Natural Gas Company* opinion. How then is the utility to proceed *to make the record* in order to carry that "heavy burden" of making "a convincing showing" that the order is "unjust and unreasonable in its consequences" and, therefore, invalid?

Presumably such appraisal by the Court is made on the basis of the *previous* operations of the utility, and the assumed future effect of the order under the changed conditions produced by it. The future effect, of course, is highly speculative. The past can be a guide for the future only

when conditions in the two periods are conceived to be analogous and comparable, a premise that cannot be indulged, particularly since it cannot be known *in advance* that the order is to be adverse or what are to be its terms.

The result then is that the "heavy burden" of making a "convincing showing" as to "consequences" is in fact a totally impossible burden. Under the doctrine of "consequences," the *statutory* review becomes merely a ceremonial validation of the Commission action. The "end result" is that the right of review effectively is destroyed. The "impact" is destructive of the law of the land as defined in the Constitution.

"But the statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless. And if the government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our government. It would mean that, where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by *administrative fiat*. Such authority, however, beneficently exercised in one case, could be injuriously exerted in another, is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power." (Emphasis added.)

Interstate Com. Comm. v. Louisville & N. R. Co. (1912), 227 U. S. 88, 33 Sup. Ct. 185, 186.

See as also in conflict with the doctrine of "consequences" announced in the *Hope Natural Gas Company* opinion:

Northern Pacific Ry Co. v. Dept. Public Works, (1925) 268 U. S. 39, 44-45, 45 Sup. Ct. 412. (Opinion by Mr. Justice Brandeis);

Baumgartner v. United States (1944) ..... U.S. ....., 64 Sup. Ct. 1240, 1243-1244;

Security Flour Mills Co. v. Comm'r. Int. Rev. (1944) ..... U.S. ....., 64 Sup. Ct. 596, 598;

Addison v. Holly Hill Fruit Products, Inc. (1944) ..... U.S. ....., 64 Sup. Ct. 1215, 1223.

4. The Substantive Standards by which the Propriety and Legality of the Commission Action is to be Measured by the Courts.

The questions here presented are: What standards has Congress declared shall govern the Commission and the courts in the administration of the Natural Gas Act? Have the Commission and the courts discarded the standards thus prescribed by the Congress? If either the Commission or the courts, or both, have done so, is such action unlawful and invalid?

It requires no citation of authority to sustain the principle that the powers of the Commission "are limited not only by the constitutional standards but also by the standards of the delegation." It is immaterial in this connection whether the power of rate-regulatory control be described or declared to be "legislative" or "administrative" in character. "The creature cannot rule the creator," declared *Mr. Justice Brewer (Kansas v. Colorado* (1906), 206 U.S. 46, 27 Sup. Ct. 655, 661).

It is equally well settled and fundamental under our constitutional system that if Congress, in which body "all legislative powers" of the federal government are "vested," has declared its legislative policy, either by enactment or considered refusal to enact, the courts are without authority to override that legislative policy. *(Milk Wagon Drivers' Union v. Lake Valley F. Products,* 311 U.S. 91, 103, 61 Sup. Ct. 122, 128).

It will be helpful briefly to consider what Congress did and what Congress refused to do in connection with the enactment of the Federal Power Act (1935), and particularly *Section 208* thereof and the Natural Gas Act (1938) and particularly *Section 6* thereof.

In 1935, when the Federal Power Act was enacted, the Federal Power Commission, which drafted the Act as introduced in the 74th Congress, embodied in its draft (Section 208, originally numbered 211) the prudent investment theory of rate base as follows:

"In determining just and reasonable rates, the Commission shall fix such rates as will allow a fair return upon the actual legitimate prudent cost of the property used and useful for the service in question."

This paragraph, after extensive hearings, was stricken in its entirety by Congress before enactment of the Act. Thereafter, in 1938, upon passage of the Natural Gas Act, the *identical* language of *Section 208* of the Federal Power Act was incorporated into and became *Section 6* of the Natural Gas Act.

For a comparison of the section as proposed by the Power Commission and as enacted by the Congress, see *Appendix D, p. 20-a, post.*

Thus, in enacting both Acts, Congress *expressly* refused to change the then existing law and accept the theory of rate base then proposed by the Commission.

In fact, as we have seen, *supra,* the Congress clearly and expressly declared it intended not to depart from the then "recognized," "standardized" and "conventional" law on the subject. This Court, *supra,* has stated that it so understands the Congressional action, and that "the basic purpose" of the Act is "to occupy the field in which the States may not act."

In the annual reports of the Commission for the years 1935 to 1940, both inclusive, there is no slightest intimation that Congress, either in 1935 or in 1938, had discarded the principle of "fair value" or had accepted the "prudent investment" rate base, so-called. (See *Appendix E,* pp. 21-a–27-a, *post),* upon which the spokesmen for the Commission insisted in 1935.

In *1938 (Railroad Comm. v. Pacific Gas & Electric Co.,* 302 U.S. 388); in *1939 (Driscoll v. Edison Light and Power Co.,* 307 U.S. 104); in *1942 (Natural Gas Pipeline Co. v. Federal Power Comm.,* 315 U.S. 575) and in *1943 (Federal Power Comm. v. Hope Natural Gas Co.,* 64 Sup. Ct. 281) the Federal Power Commission formally and extensively urged the Supreme Court to discard "fair value." Yet no part of its argument was addressed to the claim that Congress in either of the Acts had discarded "fair value," or

is reference made to the fact that Congress, in enacting both of the statutes in question, specifically refused to enact the "prudent investment" rate base proposed by the Commission.

Under all decisions of this Court, and other federal courts, "fair value" was the controlling principle at the time of the passage of both Acts in question.

Yet, in the face of this legislative history, the Commission in *1941* made the amazing claim *disclosed for the first time* in the *Chicago District Electric Generating Corporation* case (39 P.U.R. (n.s.) 263), that Congress, years before in 1935 and 1938, had given it *by deliberate indirection* the authority to adopt the very rate base which that body *specifically* had refused to embody in the regulatory acts, by which and only by which the Commission is authorized to act as a rate-regulatory body at all. The Commission, nevertheless, in its determinations of rate base, has adopted expressly, and now applies uniformly and exclusively in all rate cases, the formula known as "actual legitimate prudent cost." (See, *Re Cities Service Gas Co.* (F.P.C. 1943), 50 P.U.R. (n.s.) 65, 71) We are not here discussing whether that measure, or the principle of "fair value," or some other standard, should control, as a matter of theory and sound principle. Our present inquiry is: What authority in law and in public morals is there for this brazen appropriation of power by the Commission?

The very assumption of the power asserted by the Commission is a reflection on the Congress. Either that body was deliberately misled or it deliberately sought to accomplish by indirection that which it refused to do directly. As a matter of fact, the history of the legislation shows that neither of these things occurred in 1935 or in 1938. But, belatedly in 1941, the idea of distorting the Congressional intent and straining the language of *Section 6* was developed. The labored Commission opinion in the *Chicago District Electric Generating Corporation* case, *supra*, is based on the assumption of a non-existent fact, which does not find support in the legislative record, to-wit: that "Congress evinced a definite departure from the fair value doc-

trine * * *." The balance of the opinion repeated in other cases is an argumentative discussion in favor of the "prudent investment" theory. Had Congress intended to repudiate "fair value" and substitute for it the "prudent investment" theory, it would have been both easy and simple to have manifested such purpose. The obvious procedure would have been to enact the language proposed and strongly urged by the Commission. Instead that language was stricken in its entirety. Such refusal itself was a declaration and determination of legislative policy. The contention of the Commission that *Section 6(a)* only "contemplates the ascertainment of facts other than the actual legitimate cost which bear upon the fair value of the Company's property in rate making procedures *when the exigencies of the particular situation require such a determination*" is not supported by the Joint Committee Report. That Report states: "Subsection (a) authorizes the Commission to investigate and ascertain the actual legitimate cost of property, depreciation and other necessary facts for rate-making purposes" (Senate Rep. No. 1162, 75th Cong. 1st Sess.). This is not the language establishing a new doctrine of rate base. This statement does not suggest anything "novel". In fact the Committee declared, "There is nothing novel" in the Act as reported and as enacted.

Such then is the Commission technique. What have the courts, and particularly this Court, done to control, direct and restrain it within the statutory and other basic limitations and requirements of our governmental system? Precisely nothing up to this time.

It is the uniform view of legal writers who currently are giving consideration to the course of judicial decision that the delphic language on that subject in the opinion of *Mr. Justice Douglas* in the *Hope Natural Gas Co.* case now seeks to plant the kiss of death upon "fair value." The language to which we refer is:

> "It does, however, indicate that 'fair value' is the end product of the process of rate-making, not the starting point as the Circuit Court of Appeals held. The heart of the matter is that rates cannot be made to depend upon

'fair value' when the value of the going enterprise depends on earnings under whatever rates may be anticipated."

(64 *Sup. Ct.* 281, 287).

If that be the true view, from what reservoir of constitutional power does this Court draw to itself legislative power thus to discard and outlaw that standard which Congress expressly and pointedly declared should not be discarded or outlawed?

The reference in the *Hope Natural Gas Company* opinion to "the statutory standard of 'just and reasonable'" avails nothing, for the common law requirement *(Appendix C, p. 19-a, post)* that rates be "just and reasonable" has been in state and federal regulatory statutes and decisions the past fifty years. For that entire period neither this Court, nor any other court, has had the slightest doubt as to the purpose and meaning of that phrase. Until *now* no court has even suggested that "fair and reasonable" encroaches upon or is inconsistent with the principle of "fair value."

Thus, this Court now appears to hold, not in accordance with the belated Commission discovery in 1941 of its alleged statutory authority but to the same end, that "fair value," for fifty years the law of the land, is at this late date *an impossible concept*. This viewpoint, when presented to Congress by the Federal Power Commission at the time of the enactment of the Federal Power Act, was flatly rejected by Congress. (Note: *Section 6* of the Natural Gas Act is an identical reenactment of *Section 208* of the Federal Power Act.) But despite the Congressional dissent and declaration that it intended *not to change* that principle of law, four Justices of this Court, in the controlling opinion in the *Hope Natural Gas Company case*, nevertheless apparently consign the principle of "fair value" to oblivion. If this is the meaning and effect of that opinion, it is a clear usurpation of the legislative function of Congress, in that Congress, after extensive consideration, *expressly* and *specifically* refused to discard "fair value" and substitute the "prudent investment" theory of rate base therefor.

5. The Commission Determination of "Original Cost" Is Not the True or Entire Original Cost of Petitioner's Property and Business.

The Commission, *among other things,* eliminated all elements of engineering design and construction from its so-called "original cost" without either mention, consideration, or finding with respect thereto *(Op. Comm., V. 1, pp. 52-53, 59).* The Court, however, notices and then brushes aside petitioner's objections without regard to relevant facts and controlling law *(Op. Ct., V. 2, p. 1109).*

The burden admittedly was on the Commission to establish *by evidence* that the rates of petitioner were unreasonable *(R. V. 1, p. 79).* In arriving at such final conclusion it was necessary for the Commission to ascertain and fix a rate base. This it undertook to do, so it is said, through evidence of "original cost" only.

In passing, again it is pointed out that the assertion by the Commission that the difference, sought to be explained by it, between "original cost claimed by the Wyoming Company " * * * "and that allowed herein" is only $42,236, *(Op. Comm., R. V. 1, p. 59),* is not true *(R. V. 1, pp. 242-245. V. 3, Comm. Ex. 199, Sheets 38-39).* The difference is $129,600, which would produce an annual return of $7,500, a substantial amount to this small company, being about 9% of the total net revenue allowed in the Commission order *(R. V. 1, p. 78). And this deprivation will occur in each and every year hereafter.*

The Commission result, after deducting an amount labeled "accrued depreciation", and certain deductions of alleged customer contributions, and adding working capital and plant additions, was described by the Commission as prudent investment, and adopted by it as the rate base. In this rate base (aside from other eliminations from actual and book costs) there was included no amount whatever in any form for engineering design and construction. The evidence to this effect is clear and uncontroverted; in fact it was unwillingly given on cross-examination by the Commission witness who prepared and presented the Commission evidence of "original cost" *(R. V. 1, pp. 203, 287-288, 297).* It is a fact of common knowledge, of which we assume this Court must take judicial notice, that a natural gas pipe-

line system does not and cannot springs into existence without engineering design and construction. So here we have an original cost estimate, which did not include, and which it was deliberately intended should not include, these necessary elements of cost in any amount. These elements of cost were eliminated in their entirety because the service contract under which such essential services were furnished was with an affiliate *(Op. Ct., R. V. 2, p. 1109)*. The elimination of the contract charge for such services does not discharge *the basic duty still resting upon the Commission to ascertain the entire original cost of the plant and business of petitioner,* including these necessary items of cost, whether shown on the books or not, and without which the system could not have been built. To state, "There was no showing satisfactory to the Commission that any engineering services were rendered," *(Op. Ct., V. 2, p. 1109)* is to "ignore realities." *Again we say, the system could not have been built without such engineering services.* Further, the books of the Company showed the contract and the payments made thereunder. The presumption is that Company expenditures are made honestly and in the exercise of reasonable judgment and that the books of the Company are correct (upon which presumption the Commission several times has relied in this record), in the absence of evidence to the contrary *(Matter Portland Gen. Elec. Co.,* 1 P.U.C. 161, 166; *Missouri ex rel. Southwestern Bell T. Co. v. Public Service Comm.,* 262 U.S. 276, 43 Sup. Ct. 544; *New York v. Richmond Gas Co.* (N.Y.), 23 P.U.R. (n.s.) 465, 480). Also, there is specific evidence that services were rendered under the contract in question by two qualified engineers *(R. V. 1, pp. 201-202)*. The Commission does assert authority under *Section 6(a)* of the Act to ascertain and determine when necessary in rate cases facts not shown by the records of the company, such as here, the reasonable cost or value of the essential design and construction engineering. *(In the Matter of Chicago District Elect. Generating Corp.,* 39 P.U.R. (n.s.) 263).

It seems, too, as stated by this Court in the *Hope Natural Gas Company* case, "Its rate making function, moreover, involves the making of 'pragmatic adjustments'," that is, practical adjustments of values or consequences to produce equitable results, as indicated by the facts and circumstances of each case.

It is to be observed that all payments upon the service contract with its affiliate, for engineering design and construction aggregating in excess of $83,000, were made many years before the passage of the Natural Gas Act, and all but about $5,000 thereof *(R. V. 3, Comm. Ex. 199, p. 7)* before the decision (1930) in *Smith v. Illinois Bell Telephone Company*, 282 U.S. 133, cited and relied upon by the Court of Appeals to support the Commission action in "adjusting" all engineering design and construction *out* of its "original cost." (See *Alabama Power Co., Licensee*, P.U.R. 1932 D, 345, 354; *Re East Ohio Gas Co.*, 1 F.P.C. 586, 593, 594.) (See, also, *Appendix C, pp. 13-a, 14-a, post).* That decision is not authority for the denial of engineering design and construction costs. It relates solely and alone to the affiliate contract price therefor. The reasonable cost or value of these essential elements, however determined, remains a part of plant cost or value. In considering the propriety of and the equity requiring "pragmatic adjustments," this Court in *Los Angeles Gas and Electric Corp. v. Railroad Comm.*, 289 U.S. 287, 307, 53 Sup. Ct. 637, 644, declared, "The time and circumstances of the outlay, and the effect of altered conditions, demand consideration." The meaning of this is that common fairness must be accorded, in the light of the conditions existing when the payments were made.

The denial of a *reasonable* amount, usually fixed by courts and commissions at 5% (*Kings County Co. v. Prendergast*, 7 F. (2d) 192; *Wisconsin Tel. Co. v. Public Service Comm.*, 287 N.W. 122; 30 P.U.R. (n.s.) 65, 85; also, the Commission practice in Pennsylvania, Texas, New York, West Virginia, Ohio, Missouri, Kansas, Oklahoma, Montana), to cover this necessary element of plant cost, plainly is unjust and operates to deny to this petitioner any return thereon, *for all future years* beginning with the effective date of the Commission order. This result is a substantial deprivation of property, "reached arbitrarily and capriciously." (See, *Penn. Power and Light Co. v. Fed. Power Comm.* (C.C.A. 3), 139 F. (2d) 445, 449; *American T. & T. Company v. United States*, 299 U.S. 232, 240, 57 Sup. Ct. 170, 174.)

In disallowing all charges for essential engineering design and construction, the Commission, and the Court of Appeals as well, on the face of the record acted arbitrarily. Such violation of the accepted principles of ordinary fair-

ness cannot be condoned or explained away by mere language or by resort to the protecting aegis of asserted non-confiscatory "total effect."

"Cost", under the Commission concept and practice, is merely an accounting exercise. But costs cannot be created or determined by the theories and procedures of accountants. *Cost is an independent fact.* Nor can actual costs legally be reduced or eliminated by the refusal of the Commission and its staff to see them. (See dissenting opinion *Mr. Justice Jackson; Hope Natural Gas Company* case.)

6. The Commission Fixation of "Service Life" Is Not Supported by "Substantial Evidence."

The Court of Appeals in its treatment of "depreciation" *(Op. Ct., R. V. 2, pp. 1114-1116)* reiterates the words, the assertions, and the contentions of the Commission. However, it fails to accord even passing reference to *the basic fact* of "service life." The Commission so-called determination thereof is without supporting evidence in the record.

The one issue presented here and now is that the "service life" adopted by the Commission is not supported by evidence. Service life is a fact and can be ascertained only *by evidence*. In the "absence of such evidence" that substantial and important fact is not established. *The record in this case "shows the absence of such evidence."* It is immaterial, therefore, what type of evidence or method of proof the Court of Appeals considered appropriate *(Op. Ct., R. V. 2, p. 1115)*. There is nothing of probative value in this record as to service life under any theory.

It is not here material or in issue whether "the Commission adopted the service life *principle* for determining annual and accrued depreciation * * *," or that this Court approves that principle. Before that principle can operate it must have a foundation upon which to function. It is essential that the Commission under its burden of proof establish as a fact the service life of the property and system of this petitioner. *As to this both Commission and Court of Appeals are silent.*

The Commission declared "accrued depreciation" to be $395,900, based upon a synthetic accounting computation from the assumed "service life" of its witness *(R. V. 4, pp.*

65-66). The Commission statement "No serious controversy arose over the *estimated* service lives * * * *other than main line pipe*" (which represented 80% of physical plant costs *(R. V. 3, Ex. 11k, St. No. 4)* is not true. The Commission offered no evidence whatever of physical deterioration of plant. The Company evidence, based on extensive studies, showed accrued depreciation of $135,206, *producing the very considerable difference of $260,000 (15% of total plant cost) (R. V. 1, pp. 381-395).*

The Commission staff witness who prepared and presented the one-page summary conclusions of "Composite Service Life" *(Comm. Ex. 200, R. V. 3)* was offered as an "expert." The testimony of this witness, *the sole Commission witness on the subject*, was "expert opinion" so-called. This witness testified, precisely as stated by the Court of Appeals in condemning the testimony of a witness for the petitioner on the subject of "going concern value" *(Op. Ct., R. V. 2, p. 1112).* "* * * that he did not employ any mathematical formula in arriving at his conclusion as to amount, and he admitted that it was only a judgment figure." The law, however, does not condemn "expert opinion" testimony. But under all the authorities the probative value, *if any*, of the ventured "judgment" depends upon the foundations for the conclusions offered, as disclosed by the record. The affirmative disclosures of this record are compelling. *The Commission witness in question admitted time after time on cross-examination that his conclusions were nothing more or less than speculative guesses or conjectures (R. V. 1, pp. 468-503).* This Court is asked to examine this evidence, for the *unsupported* and therefore illegal conclusions of the Commission "expert" substantially injure this petitioner.

The conclusion of the Court that "there is no basis in this record on which it can be concluded that the determination of depreciation adopted by the Commission will result in any of these orders in its entirety causing a failure to restore the capital investment at the end of the term, and therefore no depreciation of property is involved" *(Op. Ct., R. V. 2, p. 1115),* is founded in neither fact nor law. As a factual matter, the wholly unsupported, arbitrary and grossly inaccurate conclusions of the so-called "expert" are upheld. Such procedure necessarily serves to dispense entirely with any review whatever of "the finding of the

facts," (even when the record is barren of facts, as here) from which any such conclusion must stem.

If Commission and Court, ignoring the statutory requirements of "substantial evidence" and the burden of proof, can thus "conclude," what occasion can there be for any factual evidence whatever? The actual result is that the reviewing Court, declaring itself to be impotent, is powerless to correct any error, no matter how gross. If the Court of Appeals, as here *without evidence*, lawfully can seal the record and declare by way of finality that "in its entirety" the order does not involve deprivation of property, then all review is "gone with the wind." In such fashion the entire question of "service life," from which by mere mathematical computation the so-called "accrued depreciation" of the Commission results, is eliminated from consideration and from this case. The effect, of course, is that the review becomes purely perfunctory and a mere idle gesture. Having banished "the facts before it" and divorced them utterly from the "total effect," so-called, contrary to the mandate of Congress, there remains nothing to review, for other errors of law similarly are cast "into the outer darkness." And so the right of review expressly granted by the Act *(Sec. 19(b))* is repealed by emasculation, Congress not participating.

7. The Rejection by the Commission of All "Going Concern Value" Is Contrary to the Evidence and Erroneous in Law.

The discussion by the Court of this subject *(Op. Ct. R. V. 2, pp. 1111-1112)* is merely an enlargement and along the same vein as the summary disposition of "going value" by the Commission *(Op. Comm., R. V. 1, p. 68)*, except that the Court of Appeals, as of necessity under the law (citing numerous decisions of this Court), recognized and stated that "it is an element for appropriate inclusion in the rate base."

The Court of Appeals in affirming the Commission action disallows it on two grounds, to-wit: (1) "The record fails to *indicate affirmatively* whether the element was *indirectly reflected* to any extent in other items and in the *appraisal* of other properties as part of the assembled whole." But in any event, there is no basis on which to rest the conclusion

that the failure of the Commission to *state separately* and add an amount as going concern value overstepped the limits of due process," and (2) The expert witness of petitioner on this subject "stated that he did not employ any mathematical formula in arriving at his conclusion as to amount and he admitted that it was only a judgment figure" (Emphasis added). *(Op. Ct., R. V. 2, p. 1112).*

These conclusions of the Court we will now consider in their order of statement.

The record does "indicate affirmatively" that this "element" is not directly or "indirectly reflected" in any manner or at all in the Commission rate base. And there was no "appraisal of other properties as part of the assembled whole" as intimated by that Court. The evidence so disclosing is uncontroverted and is found in the testimony of Commission witnesses *Vaught* and *Smith* on cross-examination. The witness *Vaught* specifically testified *(R. V. 1, pp. 203, 288, 297-298)* that no item of any kind in any amount "covering designing and construction engineering" was included in the Commission evidence of plant and property *(Comm. Ex. 199, R. V. 3).* This exhibit *(No. 199)* included and totaled *only* the book costs of *specific items of property* (the actual cost of some items of property were "adjusted," that is, eliminated in whole or in part by the witness). The totals in this exhibit so prepared and received in evidence *(Comm. Ex. 199, p. 37, Line 12, R. V. 3)* were adopted as the rate base by Commission witness *Smith (Comm. Ex. 202, St. 37, p. 10, Line 1, R. V. 3),* and thereafter by the Commission in its order (with certain specific adjustments) as the "original cost" of petitioner's plant and property *(Op. Comm., R. V. 1, p. 39).*

On cross-examination the Commission witness *Vaught* testified:

"Q. Have you covered anything in your figure except the bare bones, physical property, and the capitalized overhead in relation thereto?

"A. No, we have included only what we have determined to be original cost.

"Q. Bare bones?

"A. That's right."

(R. V. 1, p. 297.)

It cannot be maintained *on this record* that the element of going concern is directly or indirectly reflected in any amount or at all in the Commission rate base. The uncontroverted evidence by the Commission itself is to the contrary. This error, therefore, so readily disposed of by the Court of Appeals on the ground that "the failure of the Commission to state separately" that element, did not overstep "the limits of due process," obviously on the record is not liquidated. It is quite impossible "to state separately" the amount of an item or element which deliberately and expressly is excluded "in its totality" from the Commission rate base.

It is not essential to state it "separately," if it may be rationally concluded that going concern was given its proper weight in the over-all appraisal. *Per contra* upon the affirmative and uncontroverted showing as here, that the element was not included in any manner, the action of the Commission is purely arbitrary and oversteps "the limits of due process."

Just what weight the Court can attach to its second ground of disallowance of "going concern" is not at all clear. Opinion testimony of an expert is evidence, under the law *(North Dakota v. Minnesota,* 263 U.S. 365, 385, 44 Sup. Ct. 138, 143; *Columbus Gas & Fuel Co. v. Public Utilities Comm.,* 292 U.S. 398, 413, 54 Sup. Ct. 763, 770). The qualifications of petitioner's witness are not and cannot be denied *(R. V. 2, pp. 601-602).* They are not questioned. But it is said in condemnation that his testimony as to the *amount* of going value *(not the fact,* which the Court concedes) was not based on "mathematical formula" and was "only a judgment figure." True! Necessarily true! And supported by many decisions *(Los Angeles Gas and Elec. Corp. v. Railroad Comm.,* 289 U.S. 287, 53 Sup. Ct. 637, 647; *United Gas P. S. Co. v. Texas,* 303 U.S. 123, 134, 58 Sup. Ct. 483, 489). The probative value of such evidence properly is the subject of inquiry and analysis, however. That the testimony of this witness of petitioner had probative valu is not traversed by Commission or that Court.

Without contradiction, the evidence shows: (1) "an operating, assembled and established property," (2) "functioning with a trained personnel," (3) "a co-ordinated plant and property," (4) "with customers attached," (5) "its business established" *(United Gas P. S. Co. v. Texas, supra)*, (6) "earning money" *(Los Angeles Gas Corp. case, supra)*, (7) past and present "earning power," (8) "credit," (9) "public relations," (10) "territory served," (11) "future growth," and (12) high "operating efficiency and standard of maintenance," etc. *(McCardle v. Indianapolis Water Co.*, 272 U.S. 400, 413-414, 47 Sup. Ct. 144, 149-150). The suggestion that the conclusions as to "going value" are "based purely upon conjecture" proves nothing and obviously is contrary to the record in the light of the evidence directly responsive to and establishing the elements of such value as enumerated by this Court.

Paradoxically, however, and without inquiry or analysis thereof, the "opinion" testimony of the Commission witnesses on "service life," not based on "mathematical formula" and concededly "only a judgment figure," is adopted by that Court without comment, even though all probative value of that testimony is seriously controverted by this petitioner *in reliance upon the uncontroverted record testimony of that Commission "expert" himself.*

Going concern is a fact, a property right and a part of the property of the petitioner upon which it is entitled to make a fair return *(Op. Ct., R. V. 1, p. 1111)*. If the amount thereof in dollars, as offered in evidence by the petitioner be questioned, the duty obviously rested on the Commission under its burden of proof and other well settled rules of orderly procedure, to controvert petitioner's witness by competent evidence. This the Commisison failed to do, electing rather to condemn it as a matter of law, on the asserted authority of "this Commission and regulatory agencies in general" *(Op. Comm. R. V. 1, p. 68)*, thus to remake the law.

8. The Commission So-Called "Allocation of Cost of Service" Is Without Support of Substantial Evidence and in Disregard of Law.

On this topic also the Court of Appeals merely repeated and approved the assumptions and conclusions of the Commission. It is obvious from the opinion *(Op. Ct., R. V. 1, pp. 1112-1114)* that the Court of Appeals made no analysis of "the facts before it" or of the existing principles of law presently requiring and controlling "allocation of property." And here, as elsewhere, the same formula denying review is resorted to, the Court concluding "it cannot be said 'the order' in its totality produces arbitrary results or oversteps the bounds of due process". *(Op. Ct., R. V. 1, p. 1114).*

The necessity for the apportionment or allocation, according to use of the property, and the revenue and expenses thereof, arises from the intrastate and interstate character of the Company system and operations, and the priority in fact and in law of domestic service and customers over industrial service and customers. *Such allocation is a requirement of law.*

Simpson v. Shepard, 230 U.S. 352, 33 Sup. Ct. 729;

Smith v. Illinois Bell Tel. Co., 282 U.S. 133, 51 Sup. Ct. 65;

Columbus Gas & Fuel Co., v. Public Utilities Comm., 292 U.S. 398, 54 Sup. Ct. 763;

Wabash Valley Elec. Co. v. Young, 287 U.S. 488, 53 Sup. Ct. 234.

The very fundamental problem of allocation here involved is by no means a simple one. "While the difficulty in making an exact apportionment of the *property* is apparent, and extreme nicety is not required, only reasonable measures being essential * * *, *it is quite another matter to ignore the actual uses to which the property is put.*" (*Smith v. Illinois Bell Tel. Co.*, 282 U. S. 133, 150-151, 51 Sup. Ct. 65, 69.) The Court of Appeals, apparently with approval, adopted the Commission conclusion "that it did not follow * * * that an allocation of physical property or portions thereof must be made before any excessive returns were determined" *(Op. Ct., R. V. 1, p. 1113)*. This

conclusion is directly contrary to *Simpson v. Shepard, supra*, 33 Sup. Ct. 729, 764-765. *In fact*, the Commission made no allocation whatever of the property of the petitioner or any part thereof either before or after so-called "excessive returns were determined." The Commission in that behalf declared, "All that can be accomplished by an allocation of physical properties can be attained by allocating costs *including the return*" *(Op. Comm., R. V. 1, p. 80)*, and proceeded accordingly. The Commission thus definitely distinguishes "allocation of physical properties" from "allocating costs" and, rejecting the former, the law of the land, it sets up its own law of the case. Such formula it *asserts* by way of justification is "most practical and businesslike." These Commission statements are mere assertion. Nor are there any findings—merely argumentative hand-waving conclusions *(Op. Comm., R. V. 1, pp. 82-83)*. It cannot be determined by the Court or by anybody else on this record "other than by sheer acceptance of the Commision conclusion, in the form of its statement of the result and the cryptic formulation" of result, what, if any, are the factual foundations therefor. See *Eastern-Central Assn. v. United States*, ... U.S. ....., 64 Sup. Ct. 499, 507, and *Alabama Power Co. v. Fed. Power Comm.*, 136 F. (2d) 929, 932-933.

No finding, no explanation, no computation and no other disclosure is made as to the manner by which the Commission (under its own illegal theory of eliminating all allocation of *property*) arrived at its *modified* "Allocated Costs" *(Op. R. V. 1, pp. 82-83)*. We are simply told categorically, and in effect, "here it is, like it." Such a course of action characterizes itself. This issue is a matter of such consequence and complexity that no real function of review can be performed without the requisite foundation that has not been laid in this case.

The Circuit Court of Appeals for the Fifth Circuit recently had occasion to deal with the same character of arbitrary formularly procedure by this same Commission. We quote from the opinion of that Court:

"We are not prepared to affirm with the easy confidence exhibited by the majority of the Commission that

we fully understand the formula and its application, both because the Commission does not undertake to explain it, contenting itself with saying, 'The record disclosed the formula for making such determination which was fully set forth and explained by the staff accountant at the hearing,' and because the Commission in finding the value has completely departed from the formula and used a sort of catch as catch can theory of having one hand wash the other. We are prepared, though to say that if the formula is a sound one and applicable for the settlement of the controversy, as the Commission's words affirm, its acts deny, it should be so applied and not be abandoned for an entirely different theory, while, if it is not a sound one, it has no place in the determination of the issue presented. While not prepared then to hold, in the present state of the record, that petitioner's theory of solution is a correct one, we are in no doubt that the Commission's disposition of the item is erroneous, that it amounts to no more than guessing off a substantial item of value, and that its finding in respect to it must be reversed and the matter referred back to the Commission for the proper determination of the credit to be allowed."

Alabama Power Company v. Fed. Power Comm. (C.C.A. 5), 136 Fed. (2d) 929, 932-933.

We start then with the admitted fact that there is no "allocation of property" in this case.

Yet the Court of Appeals apparently overlooked or misconceived the distinction in fact and law between "allocation of property" and "allocation of costs" also described as "allocation of cost of service," for the opinion states: "The separation may be appropriately effected by estimating or appraising the value of *the property used in the regulated business and that used in the unregulated business. Smith v. Illinois Bell Telephone Company*, 282 U.S. 133" (*Op. Ct., p. 25*). (Emphasis added) Then it is said by the Court, "The separation or allocation may be effected by application of *any formula* which makes the principle a working one suitably adapted to the particular circumstances," citing *Columbus Gas & Fuel Co. v. Public Utilities Commission*, 292 U.S. 398. (Emphasis added) If by "any

formula" the Court means the Commission lawfully may promulgate, and the Court is at liberty to approve, a formula which discards "allocation of property" and substitutes therefor "allocation of cost of service," then that Court is not supported by the *Columbus Gas & Fuel Co.* case cited by it, or by the other controlling decisions, none of which have been overruled.

In the cited case the Court, speaking through *Mr. Justice Cardozo*, emphatically held that allocation of property is essential and that any procedure omitting such allocation is arbitrary. We quote:

> "• • • *The value of the property devoted to transmission may be measured upon the basis of mileage multiplied by demand.* United Fuel Gas Co. v. Railroad Comm. of Kentucky, supra, where the experts are stated to have agreed upon the method of division. *This does not mean that a like basis will be approved when mileage contributing to the* supply is omitted from the reckoning." (Emphasis added.)
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> *Columbus Gas & Fuel Co. v. Pub. Utilities Comm.*, 292 U.S. 398, 408-410; 54 Sup. Ct. 763; 768-769.

In *the Minnesota Rate Cases*, in which allocation of property was held essential, this Court also directly repudiated the Commission principal of "*allocating costs including the return.*" The case of *Simpson v. Shepard* has not been overruled. We quote from that opinion:

> "*The value of the use, as measured by return, cannot be made the criterion when the return itself is in question.* If the return as formerly allowed, be taken as the basis, then the validity of the state's reduction would have to be tested by the very rates *which the state denounced as exorbitant.* And, if the return as permitted under the new rates be taken, then the state's action itself reduces the amount of value upon which the fairness of the return is to be computed.
>
> "*When rates are in controversy, it would seem to be necessary to find a basis for a division of the total value of the property independently of revenue*, and this must be found in the use that is made of the property. That

is, there should be assigned to each business that proportion of *the total value of the property* which will correspond *to the extent of its employment in that business*. It is said that this is extremely difficult; in particular, because of the necessity for making a division between the passenger and freight business, and the obvious lack of correspondence between ton-miles and passenger-miles. It does not appear, however, that these are the only units available for such a division; and it would seem that, after assigning to the passenger and freight departments, respectively, the property *exclusively* used in each, comparable use-units might be found which would afford the basis for a reasonable division with respect to property used in common." (Emphasis added.)

Simpson v. Shepard, 230 U.S. 352; 33 Sup. Ct. 729, 765.

The necessity for *property* allocation likewise is explicit in the case of *Smith v. Illinois Bell Telephone Co., supra:*

"In view of the questions presented in this case, the validity of the order of the state commission can be suitably tested only by an *appropriate determination of the value of the property employed in the intrastate business* and of the compensation receivable for the intrastate service under the rates prescribed. Minnesota Rate Case, 230 U.S. 352, 435, 33 S. Ct. 729, 57 L. Ed. 1511, 48 L.R.A. (N. S.) 1151, Ann. Cas. 1916A, 18. *As to the value of that property*, and as to the revenue and expenses incident to that business, separately considered, there should be specific findings. Railroad Commission v. Maxey, 281 U.S. 82, 83, 50 S. Ct. 228, 74 L. Ed. 717." (Emphasis added.)

Smith v. Illinois Bell Telephone Co., 282 U.S. 133, 149, 51 Sup. Ct. 65, 69.

It is clear, therefore, that "the requisite separation" may not be made by "an allocation of cost of service," even though it be asserted that "all that can be accomplished by an allocation of physical properties can be obtained" by the Commission-made law of so-called "allocation of cost of service."

The underlying "factual" assumptions of the Commission

are not relevant or related to this petitioner under any theory of allocation, and are not suported by but contrary to the record.

We now turn to the factual treatment of allocation by the Commission. Exhibit, entitled "Colorado-Wyoming Gas Company, Allocation of Cost of Service, year 1939" (*R. V. 3, Ex. 227.*) was presented by Commission witness *Lyon*, an engineer in the employment of the Commission (*R. V. 2, pp. 711-716, 728-790*). The witness, in that exhibit, and the Commission, in its opinion and order, disregarded entirely the statutory limitations upon the rate-regulatory authority of the Commission (*R. V. 3, Ex. 227; V. 2, p. 726, V. 1, pp. 79, 82-83*). The witness and the Commission similarly ignored and discarded the basic characteristics of the construction and operation of the Colorado-Wyoming Company system; to-wit: the "priority" rights of domestic and commercial consumers over industrial consumers; the "shut-off" and "curtailment" provisions to enforce that priority; the frequent, continuous and increasing resort to such "shut-off" and "curtailment" provisions to meet and satisfy the peak-day demands and requirements of the domestic and commercial service; the actual use of and necessity for the total system capacity to care for such preferential rights; and the growing volume and increasing peak demands for gas by customers in the preferred domestic and commercial class.

(R. V. 2, pp. 728, 730-732, 736, 738, 740-741, 762, 771-773, 785, 786, V. 1, pp. 80-81, 82.)

The Commission *(Op. R. V. 1-p. 82)* implicitly states that the "peak day" (February 9, 1939) adopted by it as its basis of allocation as between classes of customers was the peak day of Colorado-Wyoming Company. It also states that on that day "the domestic demand reached its maximum." Actually, the foregoing statements are contrary to the uncontroverted facts. February 9, 1939, was the day of "peak-day delivery" by Colorado Interstate Company. Such day, however, does not represent the total peak-day deliveries of gas to or deliveries by Colorado-Wyoming Company system, or the peak-day deliveries to its industrial and its domestic and commercial customers, or either thereof, in

1938, or in 1939, or in 1940 (*R. V. 3, Comm. Ex. 226, Table 2, Line 28; R. V. 1, pp. 142, 186-7, 358; V. 2, pp. 728, 735-736, 734*).

No basis or reason has been offered by the Commission to explain why or how the peak-day deliveries of the Colorado Interstate Gas Company system can be used instead of the peak day of Colorado-Wyoming Company system to apply the allocation required in this case. There is no justification whatever for the Commission action. The result is not an allocation of the operations of this Company in fact or in law, under any theory.

Most of the figures as to M.c.f. deliveries of gas, in *Tables 1, 2 and 4, Exhibit 226* (*R. V. 3*), insofar as they purport to relate to Colorado-Wyoming Company, and in *Tables 1 and 2, Exhibit 227*, Commission Allocation, Cost of Service, Colorado-Wyoming Gas Company (*R. V. 3*), are not accurate nor do they actually or approximately relate to that which they are stated as representing. Moreover, they are averages or guesses or the combination of both.

(*R. V. 2, pp. 735-739, 742, 743, 746-748, 748-751, 756-758, 760-762, 764-765, 771.*)

It is declared by the Commission (*Op. R. V. 1, pp. 82-83*) that it used the demand of Colorado Portland Cement Company, the largest industrial customer of Colorado-Wyoming Company, on the "system peak day" (*Note:* February 9, 1939, the peak day of Colorado Interstate Company system, *not the peak day of Colorado-Wyoming Company system*), in arriving at its so-called "allocation." The undisputed fact put in evidence by the Commission itself, however, is that *on that day* and during the entire month of February, 1939, no gas whatever was delivered to Colorado Portland Cement Company, so there was and could be no demand or measure of demand at that time (*R. V. 3, Comm. Ex. 308, sheet 1*).

The Company "allocation" is based upon apportionment of *property*, revenue, expenses, and income between those operations of the Company over which the Commission has rate-regulatory authority and those over which it has no such authority. Such allocation is based upon the separation of jurisdictional and non-jurisdictional operations and

upon the principle of "peak responsibility" resulting from the priority, in fact and in law, of domestic consumers over industrial consumers (*R. V. 1, pp. 639-672, 706-711*). Of course, the question involved in this review is not whether the Company allocation is correct (which we believe it to be) but as to the basic accuracy, reasonableness, understandability and legality of the Commission procedure. The burden was on the Commission.

In 1935, when the Federal Power Commission appeared before Congress with its legislative proposal, *Section 211 (a)* as drafted (which as changed by Congress became *Section 208* of the Federal Power Act and 6 (*a*) of the Natural Gas Act), Congress was told certain things. Those who presented the Commission position (*Appendix C, pp. 8-a-9-a, post*) declared that the section in question "fits right into the picture of the separation of this property between state and interstate use" and specifically that "we (the Commission) know of no way of dividing it other than that specified by the Supreme Court of the United States in the Minnesota rate case * * *" (*Appendix C, p. 17-a, post*). Forgotten, of course, is this recognition of the law of allocation as the law then was and as it now is. Congress, as pointed out, rejected that "program" of the Commission for "the development of the social and economic stability of the United States" (*Appendix C, p. 12-a, post*), largely embodied in *Section 211 (c)* of the draft (as is clearly evident throughout the testimony of *Commissioner Seavey* and *Solicitor DeVane* of the Commission. Hearings before Interstate Commerce Commission, H.R. 5423, Part 1, March 7, 8, 9, 12, 13, pp. 382-576), by striking it from the Act in its entirety (*Appendix D, p. 20-a, post*). The Commission, as the record of events now unmistakably discloses, nevertheless proceeded with its non-statutory "social and economic" objectives. To facilitate realization of its declared objectives, allocation of property (as well as disregard of jurisdictional limitations, evidence and the controlling law of the land) thus *deliberately* was cast aside and repudiated. Such procedure is not merely contrary to law, it is destructive of the *ordered* and orderly processes of government binding upon the executive, the administrative and the judiciary as well as the citizen.

It is, of course, entirely clear, from the Commission opinion (*Op. R. V. 1, pp. 79-80, 82-83*) that the foundation and basis of the Commission allocation is not disclosed, and that the basic and responsible findings required by law are absent. Neither the Court nor anybody else can, by examination of the opinion, ascertain or even approximately guess the facts relied upon by the Commission or the technique and method of computation employed by it. The staff, "principles and methods," the Commission declares, "*are adopted with the modification* that the coincident demands of all customers on the system peak day (*Note:* Not of Colorado-Wyoming Company) are used, and with exception of deliveries to Highway Gas Company" (*Op. R. V. 1, pp. 82-83*). How and in what manner the technique, method and computations of Commission staff witness *Lyon* (*Comm. Ex. 227, R. V. 3*) were altered or changed, by the so-called "modification," is not disclosed or discernible. There are no findings. The Commission states that the modification was made, next states the final result, and nothing else. However, it is entirely clear that the jurisdictional restraints of the Natural Gas Act are disregarded and the established principles of law governing allocation are discarded. In defense, the Commission offers a substitute, which as is usual with those who offer substitutes, it declares is "just as good" as the real thing.

United States v. Carolina Freight Carriers Corp., 315 U. S. 475, 62 Sup. Ct. 722;

United States v. American Trucking Assn., 310 U. S. 534, 60 Sup. Ct. 1059;

Alabama Power Company v. Federal Power Comm., supra;

Morgan v. United States, 298 U.S. 468, 479-481, 56 Sup. Ct. 906, 911-912.

All references and contentions as to earnings and percentages of return of Colorado-Wyoming Company, relate (1) to all Company operations, that is to say, to non-jurisdictional as well as jurisdictional business, as to the former of which the Commission has no rate-regulatory authority whatever, and (2) as applied to the illegal so-called "actual legitimate cost"—"prudent investment" rate base sired by the Commission contrary to "the law of the land." The Com-

mission arguments indulged with respect to such earnings and return, so predicated, therefore have no probative force and effect whatever, even under the "total effect" doctrine of this Court. This is true for under the Natural Gas Act the profits derived by this Company from non-jurisdictional operations are no part of the business of the Commission (Cf. *Bd. Pub. Utility Commr's v. New York Telephone Co.*, 271 U.S. 23, 31-32, 46 Sup. Ct. 363, 366). Moreover, the amounts and percentages thereof are relevant only after there has been a legal determination of total plant and property value, revenue and revenue deductions, and after proper allocation of plant, property revenue and expenses, as required by law.

The controlling legal requirement of "property allocation" is *no mere method*. Nor is "the absence of substantial evidence" a mere defect or imperfection of method. These are fundamental and strip *this* Commission action of all basic validity and legality. It is perfectly obvious that "allocation" reaches the very heart of and controls directly the amount of the order of reduction herein involved. Whatever may be said, the stern fact cannot be dislodged that no order of reduction can stand even with the aid of the fiction of "total effect," if as here neither the basic foundation of facts nor warrant of law is present.

As a corollary to the general subject title of allocation the attention of the Court is addressed to *the Commission allocation of the ordered reduction*.

The Commission distribution of the rate reduction of $119,000 ordered, as between distribution companies served (*Op. Comm. Exhibit B, R. J. 1, p. 85*), is based upon tabulations of revenues received from such companies in 1939 (*Comm. Ex. 202, Schedule B-16, pp. 32, 34, 35*). The so-called "average revenue Mcf." is the total of all revenues received from each distributing company, divided on a total annual volumetric basis, without regard to the actual deliveries for and revenues received from the domestic, commercial and industrial classes of consumers, respectively. The difference in the price of gas to such classes of consumers, charged by Colorado-Wyoming Company and the respective distributing companies, is ignored. This method of procedure produces

confusion and highly discriminatory "city gate" rates, without justification in fact or in law, as follows:

	1939	
	Actual	Comm. Order
Cheyenne Light, Fuel & Power Co. (Cheyenne, Wyoming)	37.8c M.c.f.	24.6c M.c.f.
Public Service Co. of Colorado (Denver fringe, Golden, Boulder, Longmont, Brighton, Loveland, Fort Collins, etc., Colorado)	37.5	30
Greeley Gas & Fuel Co. (Greeley, Colorado)	37.9	22.7

Commission *Exhibit 50 (Appendix B, p. 5-a, post)* discloses the relative location to petitioner's source of supply of the communities and areas served. Reference thereto, it is submitted, fully demonstrates that such a rate structure is both arbitrary and impossible.

> "When using average figures for the purpose of reaching general conclusions, extreme care is needed. Many errors are traceable to the false assumption that average costs or revenue per unit of service determine whether one rate schedule is higher or lower than another."
>
> *Re Queens Borough Gas & Electric Co.*, (N. Y. P.S. Comm.) 39 P.U.R. (n.s.) 65, 71.

If, as contended by this petitioner, allocation is required by law, as between *Colorado* and *Wyoming* sales and as between sales for resale for domestic and commercial uses and "direct" industrial sales, the gross sales at Cheyenne, Wyoming, alone subject to the Commission's rate-regulatory authority, in 1939 were $182,152 of the total gross revenue of $828,939, for that year, that is 22% thereof *(R. V. 3, Exs. 245; St. Nos. 4 and 8)*. This result obviously presents a totally and fundamentally different proceeding, in all its factual and legal aspects, than the proceeding as adjudicated on the Commission assumptions and theories.

9. The Substance of "Due Process" Under the Fifth Amendment to the Constitution Has Been Denied to This Petitioner by the Commission and the Court of Appeals.

Commission and Court of Appeals alike brush aside also all other specifications of error, either without reference thereto or by mere discounting mention thereof. Such Commission errors are no less arbitrary but only less substantial in dollars than those specifically suggested in this petition for certiorari. The uniformity of the treatment thus accorded all questions on review simply emphasizes the "totality" of the derogation and denial of all right of review as an actual and practical matter.

This case erroneously has been treated as a mere incidental matter and scrambled into the Commission and Court of Appeals determinations of the *Canadian River Gas Company* and *Colorado Interstate Gas Company* cases, *supra*. The issues in this case are separate and distinct, in fact and in law, from the issues in those cases. As a result of the merging process indulged, several material issues herein involved are confused or are completely by-passed in silence. This procedure of the Commission and the Court of Appeals operates to deny to this petitioner the fundamental right of due and orderly process. Our criticism applies particularly to the issues of rate base, jurisdiction, "service life," allocation and due process.

To summarize: Neither facts, procedural law nor substantive law control or restrain the Commission. "Jurisdiction," both as to the extent and character thereof, is asserted contrary to the terms of the Natural Gas Act. The legal requirements of "fair value," including the value of "an assembled plant doing business and earning money," "actual accrued depreciation" and "allocation of property" are ignored. The "burden of proof" imposed by law is disregarded throughout in all aspects of the case. Uncontroverted and relevant facts are cast aside and conclusions are declared in the entire absence of factual support.

Moreover, the duty of judicial review of such Commission action, imposed on the courts by Congress, appears to have become, as construed and applied by the Courts of Appeals and this Court, "a costly time-consuming pageant of no practical value."

"Due process" is not merely a term descriptive of the requirements for and essentials of formal procedure; it is vastly more—it is "the spirit of the law," having its origin in the common law and thereafter molded into the very heart of American constitutional government. In its larger aspects, it is "the law of the land."

While a precise definition of "due process" is well nigh impossible, because of the universality of its application in the administration and conduct of government, its purpose inherent in the very structure of our system is to afford effective guarantees to security against the *arbitrary action of government.*

The Supreme Court of the United States more than a century ago, in discussing the elements and concept of "due process," then embodied in the Constitution of Maryland, declared:

> "The good sense of mankind has at length settled down to this: that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice."
>
> *Bank of Columbus v. Okely* (1819), 4 Wheat. 235, 244.

A century later *Mr. Justice Holmes* described it as "the rudiments of fair play" *(Chicago M. & St. P. Ry. Co. v. Polt* (1914), 232 U.S. 165, 34 Sup. Ct. 301.)

The application of it was not abandoned to the whim or inclination of instrumentalities or agencies of public power whether created in the recent or distant past. To the courts were delegated the high honor and the solemn duty of protecting all citizens alike, through the application of this transcendently important and glorious concept of government.

Since judgment is so dependent upon and so reflects point of view, judgment uncontrolled by established and declared standards or measures becomes a menace to and destructive of orderly processes of government. Being uncontrolled it becomes fortuitous, that is to say, conditioned upon the viewpoint of that person or tribunal called upon by the accident of circumstance to judge. Congress clearly had this danger

in contemplation when enacting the Natural Gas Act, and particularly with respect to the rate-regulatory authority in *Sections 4 and 5* and the substantial right of review in *Section 19 (b)* thereof. The language of the Sections in question clearly does not delegate uncontrolled discretion.

In the very nature of things each issue or question of fact must stand or fall when measured by the evidence, if any, in proof or disproof of that particular issue or question of fact.

The general law is that *each* such issue of fact and each of the findings of fact made, or which should have been made, by the Commission or other administrative agency must be supported by substantial evidence *(Interstate Comm. Comm. v. Jersey City* (1944), 64 Sup. Ct. 1129, 1133). Its findings and determinations must be "formulated not only after due consideration of the factors involved but with sufficient explication to enable the parties and ourselves (the court) to understand, with a fair degree of assurance, why the Commission acts as it does" *(Eastern-Central M. C. Ass'n. v. United States* (1944), 64 Sup. Ct. 499, 508).

Moreover, under no theory can one issue or question of fact be offset against an entirely different and unrelated issue or question of fact. It is also elementary that the absence or insufficiency of evidence to support any particular issue or question of substantial and material fact cannot be condoned or validated by reason of the fact, if it be a fact, that another and independent issue or question of substantial and material fact is supported by "substantial evidence." The same conclusions relate as well to the determination of issues of law.

True, "the Commission's order does not become suspect" *merely* "by reason of the fact that it is challenged." But, it cannot be purified or rendered valid "in its entirety" or at all by a process of sanctification. It is not sacrosanct. Congress has otherwise ordered and in so doing "has not used meaningless words." The term "arbitrary" is, under established law, a general expression or conclusion indicating that with respect to one or more specific and material issues the administrative order, measured by the record and controlling law, is not supported by substantial evidence or

is contrary to law. A finding of unreasonableness, when justified, is merely the conclusion drawn from *all* determinations of material fact under the applicable rules of law. It has never been the law that a rate making authority may, by making a finding that certain rates are unreasonable, preclude judicial review of the evidentiary and legal foundations of such finding.

Congress in *Section 19(b)* of the Act "set out a criterion" to govern both the Commission and the courts on review, to wit: "The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive." This also is the holding of the Circuit Court of Appeals for the District of Columbia, in the case of *Saginaw Broadcasting Co. v. Federal Communications Comm.*, 96 F. (2d) 554, 559. (See, also pp. 558-561 and decisions of this Court cited.) (Certiorari denied.) Therein that Court, in the statutory judicial review of Commission orders under the Communications Act of 1934, 47 U.S.C.A., para. 402(b)(1) declared that "Thereby the Act has set out a criterion to govern the Commission * * *." The two review sections are identical in purpose and meaning.

That Court in that case also ably analyzed the foundations for the Congressional requirement that there be "findings of fact" to guide and control both the Commission and the courts and "the necessary content" of the essential "finding of facts." Such requirement, among other things, "is a means provided by Congress for guaranteeing that cases shall be decided according to the evidence and the law, rather than arbitrarily or from extra legal considerations. * * * In the absence of findings of fact the reviewing tribunal can determine neither of these things." These principles, having their origin in the Constitution itself and the decisions of this Court for one hundred and fifty years, until now, abound in the insistence upon this fundamental procedure.

If then the record discloses that the Commission has proceeded without supporting evidence or without warrant of law, no conclusion which the Commission reaches upon such improper basis can convert that wrong into right. It is only after the several specific determinations of material issues of fact have been found to be supported by "substantial

evidence" and in conformity with controlling law that the court reaches the realm of "total effect" or "entirety."

"Total effect," "end result," "rate impact," and "consequences," unmeasured by material facts or controlling law, are not "due process," even in a "confiscation" case. Furthermore, if courts of review are not concerned with particular material issues as such, there is no occasion at all for the statutory review, for relief from "confiscation" is still available through courts of equity.

The "new order" of administrative finality and judicial impotency, we are told is epitomized by the decision of this Court in the *Hope Natural Gas Company* case. It is most difficult to understand what purpose now can be served by the statutory requirements of a hearing as a condition precedent to Commission or other administrative findings. Such findings to all intents and purposes are final and not reviewable, for the sole test on review, it seems, is overall effect, whatever that limitless and unmeasured phrase may mean.

In the *Hope Natural Gas Company* case, in treating of the problem presented of the underlying basis of "reason," it is said: "If the total effect of the rate order cannot be said to be unjust and unreasonable"—this is the end of the matter. Justification for this pronouncement is claimed because the Commission is not bound to the use of formulas; can make pragmatic adjustments; can meet the requirements of the Act by viewing the order in its entirety, and this because it is the result reached and not the method employed which is controlling. Nothing is settled by such a disposition of the problem. Apparently, under it, actual costs may be disregarded—items of property disallowed, and admittedly pertinent facts fail of consideration, and yet the order be sustained. Such results may not reasonably be designated as a matter of mere method and unsubstantial in character.

By such a rationale it is difficult to imagine any right of property which would not be subject to deprivation without redress. The present stated approaches of this Court are expressions of assumptions and involve circular reasoning.

If independent "end result" is the sole criterion, and this apparently is the present view of this Court, then the statute

so construed would be void because it becomes a pure delegation of legislative power.

The reasoned treatment of this question by *Mr. Chief Justice Taft* is cogent. He says:

> "The maxim that a legislature may not delegate legislative power has some qualifications, as in the creation of municipalities, and also in the creation of administrative boards to apply to the myriad *details of rate schedules* the regulatory police power of the state. The latter qualification is made necessary in order that the legislative power may be effectively exercised. In creating such an administrative agency, the *Legislature*, to prevent its being a *pure delegation* of legislative power, must enjoin upon it a certain course of procedure and certain rules of decision in the performance of its function. It is a wholesome and necessary principle that such an agency must pursue the procedure and rules enjoined, and show a substantial compliance therewith, to give validity to its action. When, therefore, such an administrative agency is *required* as a condition precedent to an order, to make a finding of facts, the validity of the order must rest upon the needed finding. If it is lacking, the order is ineffective."

Wichita R. & L. Co. v. Public Utilities Comm. (1922), 260 U. S. 48, 58-59, 43 Sup. Ct. 51, 55.

See, *Beaumont Sour Lake, etc. Co. v. United States*, 282 U.S. 74, 86, 51 Sup. Ct. 1, 6, and cases cited.

Now being substituted for "due process" in spirit and in fact, to the end of according "the minimum of due process," as it is called, all in the interest of convenience, speed, efficiency, etc., so we are now told by the proponents of the "new order," is the new slogan—"This we do in the public interest." These words "in the public interest," without measure or standard to control their application, of course mean whatever any official of government chooses to declare to be "the public interest." There are many, and the number is rapidly increasing, who are greatly alarmed by the obvious objectives of this apparently innocent phrase. The "public interest," whenever necessary, is declared and defined in our basic structure of government and in the laws enacted by Congress "in pursuance thereof." Therein are

found the standards governing and controlling the administration of government, without which the will of the administrator or the judge, be he benevolent, selfish, visionary or despotic, is supreme.

Validity and invalidity, legality and illegality, regulation and confiscation, due process of law and personal government cannot be made to mean the same thing by any process of attempted rationalization.

"*All legislative powers* herein granted shall be vested in a *Congress* * * *. *The judicial power* shall extend to *all cases in law and equity* arising under this *Constitution*, the *laws* of the United States * * *. *This Constitution, and the laws* of the United States *which shall be made in pursuance thereof;* * * * shall be the supreme *law of the land* * * *." (Emphasis added.) This is not theory or legislative lore. This is American constitutionalism.

CONCLUSION.

Accordingly it is respectfully submitted that the writ of certiorari should issue herein.

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APPENDIX A.

Pertinent Sections of the Natural Gas Act.

(15 U. S. C. 717.)

NECESSITY FOR REGULATION OF NATURAL-GAS COMPANIES.

Section 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

RATES AND CHARGES, SCHEDULES, SUSPENSION OF NEW RATES.

Section 4. (a) All rates and charges made, demanded or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

* * *

(e) * * * At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over

other questions pending before it and decide the same as speedily as possible.

FIXING RATES AND CHARGES; DETERMINATION OF COST OF PRODUCTION OR TRANSPORTATION.

Section 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order. * * *

(b) The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas.

ASCERTAINMENT OF COST OF PROPERTY.

Section 6. (a) The Commission may investigate and ascertain the actual legitimate cost of the property of every natural-gas company, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property.

(b) Every natural-gas company upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction.

ACCOUNTS, RECORDS AND MEMORANDA.

Section 8. (a) * * * The Commission may prescribe a system of accounts to be kept by such natural-gas companies, and may classify such natural-gas companies and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays or receipts shall be entered, charged, or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

REHEARINGS, COURT REVIEW OF ORDERS.

Section 19. (b) Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the Circuit Court of Appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reason-

able grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

Note:—Section 19 (b) of the Natural Gas Act is identical, word for word including punctuation, with the "Court Review of Orders" sections of the "Public Utility Holding Company Act of 1935" and the "Federal Power Act" (1935), to-wit: Section 24 (a) and Section 313 (a) thereof respectively.

APPENDIX B.

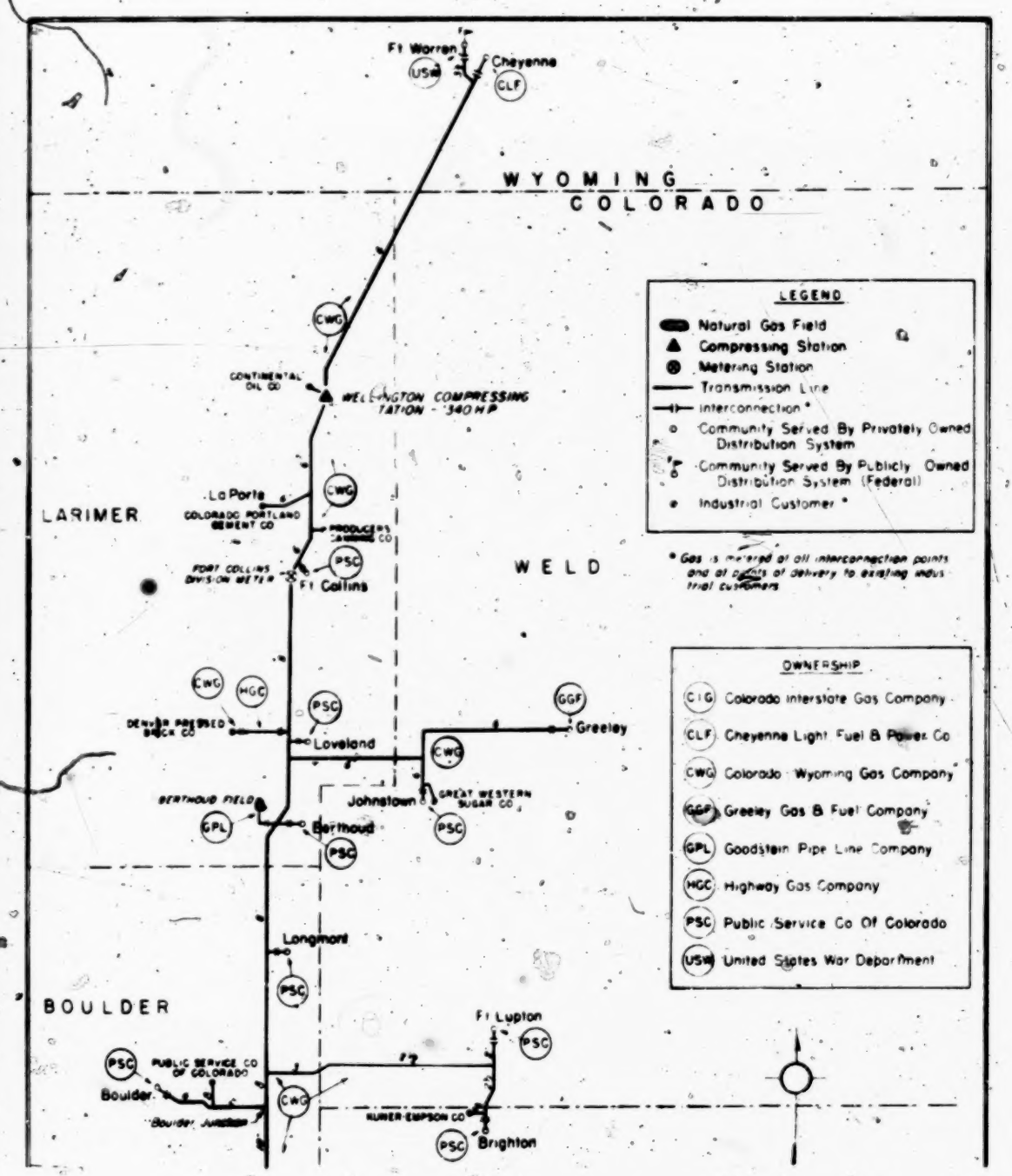

EXHIBIT NO. 50

APPENDIX C.

Excerpts From Part I.

"HEARINGS BEFORE THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, HOUSE OF REPRESENTATIVES, SEVENTY-FOURTH CONGRESS,

FIRST SESSION,
ON
H. R. 5423

TO PROVIDE FOR CONTROL IN THE PUBLIC INTEREST OF PUBLIC UTILITY HOLDING COMPANIES USING THE MAILS AND THE FACILITIES OF INTERSTATE COMMERCE, TO REGULATE THE TRANSMISSION AND SALE OF ELECTRIC ENERGY AND NATURAL GAS IN INTERSTATE AND FOREIGN COMMERCE, AND FOR OTHER PURPOSES."

(February-March, 1935)

Testimony of *Commissioner Clyde L. Seavey* of the Federal Power Commission:

"Title II of H.R. 5423, introduced by Congressman Rayburn, is entitled 'Amendments to Federal Water Power Act.' By these amendments the present act is divided into three titles. It is provided that the present Federal Water Power Act shall constitute title I of the amended Federal Power Act. The Rayburn bill does not contain all of the sections of the present act. It includes (pp. 77 to 102) only those sections which it proposes to amend. None of these amendments to the present sections of the act is of major significance; they are made largely for the purpose of clarifying its effect in situations which have arisen in the course of its administration. A separate memorandum explaining these amendments is submitted herewith. The present analysis is devoted to the new titles which are added by the bill (pp. 103 to 141). Of these new provisions title II (pp. 103-122) contains the substantive provisions for the regulation of interstate electric utilities, and title III (pp. 122 to 141) brings together the provisions applicable to both water power licensees under title I and interstate operating companies under title II, including the general administrative and procedural sections."

(Page 384)

"Mr. Wolverton: Did you participate in the drawing of this bill?

"Commissioner Seavey: Yes; I worked on it along with many others.

"Mr. Wolverton: Who were the others?

"Commissioner Seavey: They were the legal department, our legal department, and members of the Commission, and our engineers were consulted about certain practical phases; our accountant was consulted, and generally, so far as the Commission is concerned, we took in the whole staff of the Commission.

"Now, in addition to that, together we consulted the chairman of this committee, Mr. Rayburn; discussed the policies and the provisions of the bill, and also consulted the legislative counsel and Dr. Splawn. I do not know whether I can remember anybody else or not."

"Mr. Wolverton: Did you all sit in one general group, or merely consult one another at different times?

"Commissioner Seavey: We sat in a general group a part of the time, and by several groups, that is, by smaller groups.

"Mr. Wolverton: After a title or article had been drawn, was it submitted to the Federal Power Commission for its approval?

"Commissioner Seavey: Yes; the Federal Power Commission approved of it. That is, they indicated their approval of the bill.

"Mr. Wolverton: Has the Commission approved this title as it appears in the bill?

"Commissioner Seavey: Yes; they have approved the policy and the amendments of this title. As I have explained here previously, some of this language may need to be changed in order to make sure those policies and aims are accomplished.

"Mr. Wolverton: Are the views and opinions you express here also the views of the Power Commission?

"Commissioner Seavey: Yes; as they have been expressed by the Power Commission.

"Mr. Wolverton: And, you make no qualification that you are expressing your own views and not those of the Commission?

"Commissioner Seavey: No. My own views coincide."
(Pages 400-401)

Testimony of *Dozier DeVane*, Solicitor, Federal Power Commission:

"Mr. Wolverton: Who actually sat down and drafted that language? Do you know? You know in the drawing of any bill it finally comes down to one individual or two individuals, who actually express the policies and ideas by the use of words. Who [illegible] that as to article II?

"Mr. DeVane: Commissioner Seavey and myself, of the Federal Power Commission, were the two persons to whom the Commission delegated the responsibility for this work. I would like to say, however, that to neither of us belongs the credit, if we may call it credit, for the language that is in the bill, because we have had a great deal of assistance from members of the Commission and from members of its staff. This title has been worked over very seriously and very earnestly."
(Pages 552-553)

DRAFT OF FEDERAL POWER ACT AS INTRODUCED IN CONGRESS.

TITLE II. "AMENDMENTS TO FEDERAL WATER POWER ACT" (Amendments as proposed by Power Commission, indicated by italics).

"Section 201. Section 3 of the Federal Water Power Act is amended to read as follows:

* * * * * * *

"(13) 'net investment' in a project means the actual legitimate *prudent* original cost thereof * * * "

"Sec. 4. The Commission is hereby authorized and empowered—

* * * * * * *

"(b) To determine the actual legitimate *prudent* original

cost of and the net investment in a licensed project, • • • ."

(Pages 24-25, 452)

Note: The foregoing amendments were rejected by Congress, that is, the word "prudent" was rejected by Congress.

Comment: It is important to note that when Congress did intend to authorize the untilization of a rate base other than the rate base of "fair value," it did so in language directly, expressly and unmistakably declaring such policy. Thus in the *Federal Water Power Act of 1920 (41 Stat. 1063, 16 U.S.C. 791-823)*, "the valuation" of the property of any licensee "for purposes of rate making" *(Section 20)*, as well as for acquisition thereof by the Government *(Section 14)* is expressly limited to the "net investment" which is not "to exceed the fair value of the property taken" *(Section 14)*, as defined and limited to "actual legitimate original cost" *(Section 3 (13))*. Every license issued under the Act is "conditioned upon the acceptance by the licensee" of such rate base and valuation *(Section 6)*.

This is the only instance in which Congress has supplanted the principle of "fair value." It raised no constitutional obstacle, for if any person desired to avail himself of the license privileges of the Water Power Act, he voluntarily accepts at the outset the "terms and conditions" under which the United States is willing to permit the exercise of such privileges *(Alabama Power Co. v. Federal Power Comm.*, 128 F. (2d) 280, 287). This is both logical and just under the very special circumstances involved in the development of hydro-electric "projects" on the "public lands," "reservations" and "navigable waters" (Section 3 (1), (2), (8)), over all of which the United States exercises the prerogative of proprietorship as well as that of sovereignty *(Light v. United States*, 220 U. S. 523, 31 Sup. Ct. 485).

PART II. "REGULATIONS OF INTERSTATE ELECTRIC COMPANIES ENGAGED IN INTERSTATE COMMERCE."

Commission Draft of Bill:

"Ascertainment of Cost of Property.

"Sec. 211. (a) The Commission shall have power to ascertain for the purposes of this title and title III the actual legitimate prudent cost of the property of every public utility, and every fact which in its judgment may or does have any bearing on the determination of such cost.

"(b) The Commission may require any public utility to file with it an inventory of all or any part of the property of the utility and of the original cost thereof, including only those elements of cost that may be considered for purposes of determining just and reasonable rates under the provisions of this title and title III and the rules and regulations of the Commission. The Commission shall keep itself informed regarding the cost of all additions, betterments, extensions, and new construction of the property of every public utility.

"(c) In determining just and reasonable rates, the Commission shall fix such rate as will allow a fair return upon the actual legitimate prudent cost of the property used and useful for the service in question.

(Page 35).

Note: As shown by Appendix D, *post* the foregoing proposal was rejected by Congress in Section 208 of the Federal Power Act (original number 211). Section 208 as enacted was reenacted as Section 6 of the Natural Gas Act.

Excerpts From Testimony of Commissioner Seavey of the Federal Power Commission.

"Section 202 (p. 104) imposes *in general terms* the duties of a public utility upon every operating company embraced within the jurisdiction defined in the preceding section. They are required to furnish exchange, and transmit energy upon reasonable request, to maintain adequate service, and to charge reasonable and nondiscriminatory rates."

(Page 385)

"Section 211 authorizes the Commission to ascertain the actual prudent cost of the property of every public utility under its jurisdiction and to require the utilities to file inventories of their property and its cost. It directs the Commission to keep itself informed of the cost of all additions and betterments to utility property. And it provides that in determining just and reasonable rates, the Commission shall fix rates which will allow a fair return upon the actual legitimate prudent cost of the property used and useful for the service in question. Rate regulation must eventually be based on prudent investment. Recent decisions of the Supreme Court and the respect which the Court has always paid to the constitutional interpretations of the coordinate branches of the Government afford grounds for hope that this highly desirable result will be accomplished if the Congress should now definitely adopt the prudent cost rate base. This would present the case to the Court in a new light with a declaration of national policy that it has never had before."

(Page 386)

"Section 310 gives to any person aggrieved by an order of the Commission the right to have such order reviewed in the Circuit Court of Appeals of the United States for any circuit wherein such person resides or has his principal place of business or in the Court of Appeals of the District of Columbia. The review is upon the record made before the Commission."

(Page 387)

"The broad general purposes of the bill may be defined briefly, as, first, the strengthening in times of peace of the national defense, and secondly, the conservation and planned use of the Nation's resources, and thirdly, the development of the social and economic stability of the Nation."

(Page 391)

"I want to remove any doubt that this Federal Commission would have jurisdiction over the fixation of intrastate rates, because I think it is not necessary."

(Page 397)

"As I have indicated, it is the purpose of this bill that

the Federal Power Commission will assume only jurisdiction over the interstate wholesale business of these companies. I think I have already made that plain."

(Page 402)

"Mr. Bulwinkle: I say, in California, using it because you are familiar with it, how far have you fallen down on your regulation of the utilities because of the failure to have regulation?

"Commissioner Seavey: Well, I was going to give you some instances, if you would let me continue.

"Mr. Bulwinkle. Proceed.

"Commissioner Seavey. For instance, the California Commission has not been able to completely regulate because of the interstate contracts for management service and engineering and other classes of service.

"Now I state that, and perhaps should be specific—

"Mr. Bulwinkle: You mean that on account of the holding company that made these service charges against the operating companies; is that what you mean?

"Commissioner Seavey. Yes; whether it is a holding company, or any other.

"Mr. Bulwinkle: Over the heads of the operating companies, either one.

"Commissioner Seavey: Yes; or a service company that may enter into contracts without being a holding company or an overhead control.

"Mr. Bulwinkle: Now that is one illustration. Could that not be taken care of under any circumstance by the State utilities commission?

"Commissioner Seavey: No, not properly; not completely.

"The reason for that is this: I will give you an instance: In 1924 I held a hearing on the Southern California Telephone Co. That company, according to the best information we could get from its books and records, was being depleted because of the withdrawal of funds

by the A. T. & T. through an affiliate in the form of fees and charges. That was not the entire reason for the inability of that company properly to function, but that and other reasons brought that utility before the commission and I might say that condition was started probably before the commission had jurisdiction. What brought that utility before the California Commission was a request for an increase of rates. And one of the elements that caused the increase of that rate was the draft upon the utility by the outside control.

"Now, in handling that rate case, it is true that the California commission at that time cut down that fee something like a half or more, but that did not stop the drafts upon the utility by an outside party. They could legally collect it, but it would not be allowed in California in the rate base, in the expenses in fixing the rates.

"Mr. Bulwinkle: That is an illustration, Mr. Commissioner, of the telephone company.

"Commissioner Seavey: Yes.

"Mr. Bulwinkle: Have you an illustration affecting a power company?

"Commissioner Seavey. Yes; I have one of a power and gas company. The San Diego Gas & Electric Co. is a subsidiary of the Byllesby people. They have been charging something like $170,000 yearly for their services. The California commission found that $70,000 was a reasonable cost of those services, and only allowed that much in fixing rates; but the Byllesby Co. can still draw upon that company and deplete its reserves, without the California company being able to take it in a rate case."

(Pages 406-407)

"Commissioner Seavey. Yes; the jurisdiction only goes to interstate and if there is any doubt about that, language should be put in there; but it is believed that covers it."

(Page 410)

"Mr. Huddleston: Mr. Seavey may I direct your attention to the rule of rate making on *page 117, subsection (c)* (*Note: Sec. 211*)

"Commissioner Seavey. Yes.

"Mr. Huddleston: Where did that come from?

"Commissioner Seavey: Where did that come from?

"Mr. Huddleston: Where did you take that from?

"Commissioner Seavey: That approximately comes not wholly from, and is the bases upon which the rates are fixed in California. There is added to these requirements which are not in the California statute, but which exist by administration, in the belief that they should be allowed a return upon a value controlled by the prudent cost of the property."

(Page 411)

Excerpts from Testimony of Solicitor DeVane of the Federal Power Commission

"Mr. DeVane: There has been considerable discussion here as to what is the purpose of this legislation and the effect it will have upon States and upon State regulation, and in that connection, I wish to say that in the instruction to its representatives that participated in the preparation of this legislation, the Federal Power Commission directed that what it desired to recommend to Congress was legislation that would complement and not supersede State regulation.

"Our specific instructions, from our Commission, was to preserve to the fullest extend State regulation and to draw a law that would complement that regulation as far as Congress could go.

"Now, that has been done and I desire to state in the beginning that this law was prepared as a complement to State legislation and with the few exceptions that I shall point out does not in any particular supervise or destroy State regulation."

(Page 495)

"I will make reference to these sections as I talk about section 201.

"I would like to say first that insofar as rates are concerned that section 201 is intended to give the Fed-

eral Power Commission jurisdiction over the wholesale rates only; rates over which the State commissions have no jurisdiction as decided by the Supreme Court of the United States in the *Public Service Commission v. The Attleboro Steam & Electric Co.*, 273 U. S. 83.

"Now, that is so far as rates are concerned.

"It does not extend the jurisdiction, and it is not intended to extend the jurisdiction to cases such as the *Pennsylvania Gas* case decided by the Supreme Court, where the energy was transmitted in interstate commerce over the State line and sold by the same company for local distribution. It is our opinion that under the decision of the Supreme Court in that case, the jurisdiction of this Commission might be extended to that kind of a case; but this bill does not go that far. The bill only applies to interstate rates at wholesale in interstate commerce."

(Pages 497-498)

"Insofar as the facilities are concerned, it takes no jurisdiction away from the States, but it does confer additional jurisdiction upon this Commission as to those facilities that have to do with interstate transmission.

"I want to make that distinction very clear, because it has nothing to do with facilities that relate only to local distribution or to transmission lines used for local distribution."

(Page 501)

"Mr. Cooper. May I ask this question? I am merely asking it for information. Suppose that 95 percent of the business of one of these utilities is confined within the State and 5 percent was interstate commerce, would your Commission have any authority or jurisdiction over the public utility?

"Mr. DeVane. No; not entire jurisdiction over the public utility. The Power Commission would have jurisdiction over that 5 percent of interstate energy, if it were transmitted and sold in interstate commerce at wholesale.

"Mr. Cooper. Just at wholesale?

"Mr. DeVane. Just at wholesale. The Power Commission would have jurisdiction over the transmission lines that transport that energy from the point of production in interstate commerce. The Power Commission would have jurisdiction over the production facilities insofar as that was necessary for the regulation of the energy that moved in interstate commerce."

(Page 502)

"Mr. DeVane. Yes sir; that is one of the sections that I referred to in connection with section 201.

"You will find that subsection (a) of section 211 provides that the Commission shall have power to ascertain for the purpose of this bill, actual legitimate prudent cost of the property of every public utility and every fact which, in its judgment, may or does have any bearing on the determination of such cost.

"Now, that fits right into the picture of the separation of this property between State and interstate use.

"In this separation, we know of no way of dividing it other than that specified by the Supreme Court of the United States in the Minnesota rate case: Where you can ascertain the cost of the property, you can readily determine what percentage of the property is used in interstate commerce and what percentage is used in intrastate commerce, and you can divide for the benefit of the Federal Commission and the State commissions that part of the property that is used in interstate commerce, which will determine rates, and that part that is used in intrastate service, upon which intrastate rates will rest."

(Page 505)

"Mr. DeVane. No, sir; and I want to make that very definite: and if there is any doubt about it, so far as I am concerned, such amendment might be made as to make it clear. We have attempted in this bill, Mr. Wolverton, to accomplish these two purposes: One is not to supersede, but aid State regulation; and insofar as rates are concerned, to deal only with rates that State Commissions cannot regulate."

(Page 514)

"At the outset of my discussion of title II of title II, I pointed out the provisions in connection with the jurisdiction conferred by this title, called attention to the fact that insofar as rates were concerned, the title conferred jurisdiction upon the Federal Power Commission over wholesale rates that were not subject to control by State Commissions under the decision of the Supreme Court in the Attleboro case."

(Page 518)

"In section 202 (b) is the same provision with reference to rates and charges that is found in each other act of Congress conferring jurisdiction on regulatory bodies."

(Page 531)

"• • • But, I do want to say in connection with any of the statements that I have made with reference to any language used in title II of title II, that what I have said to this committee as to the purpose of this legislation, and as to the desire of the Federal Power Commission, presents the purpose and the desire of the Commission and that there is no desire whatever to obtain results through this legislation that I have not stated.

"We are not using words that are ambiguous with the intention or in the hope of getting a different result when the legislation is passed. We are perfectly sincere in our efforts to accomplish a certain purpose, and we have used language that we think accomplishes that purpose."

(Page 551)

"Mr. DeVane. Yes; in connection with that, may I refer to section 211 (c), on page 117: section 211 (c).

"I think probably I should refer to section 211 in its entirety, but particularly I want to address a few remarks to 211 (c).

"Section 211 authorizes the Commission to ascertain the actual prudent cost of the property of every public utility under its jurisdiction and to require the utilities to file inventories of their property and its cost. It directs the Commission to keep itself informed of the cost of all additions and betterments to utility property. And it

provides that in determining just and reasonable rates, the Commission shall fix rates which will allow a fair return upon the actual legitimate prudent cost of the property used and useful for the service in question. Rate regulation must eventually be based on prudent investment. Recent decisions of the Supreme Court and the respect which the Court has always paid to the constitutional interpretations of the coordinate branches of the government afford grounds for hope that this highly desirable result will be accomplished if the Congress should now definitely adopt the prudent cost rate base. This would present the case to the Court in a new light with a declaration of national policy that it has never had before.

"Now, I direct your attention to the provisions of section 202 which is merely declaratory of the common-law principle that rates shall be just and reasonable. I directed your attention to 211 (a) this morning as being complementary to State regulation. Section 211 (a) will secure a body of information, which I think is most valuable in the administration of this act and as an aid to the State commissions in their regulation of consumers.

(Page 572)

APPENDIX D.

COMPOSITE OF SECTION 208 (ORIGINALLY NUMBERED 211) OF THE FEDERAL POWER ACT AS PROPOSED BY THE POWER COMMISSION AND AS ENACTED BY CONGRESS.

The *italicized* language, together with the language of the text, *not stricken*, constitutes the section of the Act in question, *as enacted by Congress.*

The *italicized* language, together with the language of the text *as stricken*, constitutes the section as drafted by the Federal Power Commission, submitted by it to Congress, with extensive supporting discussion, *but rejected by Congress.*

(a) *The Commission* ~~shall have power to ascertain for the purposes of this title and title III~~ may investigate and ascertain *the actual legitimate* ~~prudent~~ *cost of the property of every public utility*, the depreciation therein, and when found necessary for rate-making purposes, ~~and every fact which in its judgment may or does have any bearing~~ other facts which bear *on the determination of such cost* or depreciation, and the fair value of such property.

(b) ~~The Commission may require any~~ every *public utility* upon request shall ~~to~~ *file* ~~with it~~ with the Commission *an inventory of all or any part of* ~~the~~ its *property* ~~of the utility~~ and a statement of the original cost thereof, ~~including only those elements of cost that may be considered for purposes of determining just and reasonable rates under the provisions of this title and title III and the rules and regulations of the Commission. The Commission~~ and *shall keep* ~~itself~~ the Commission *informed regarding the cost of all additions, betterments, extensions, and new construction* ~~of the property of every public utility.~~

~~(c) In determining just and reasonable rates, the Commission shall fix such rate as will allow a fair return upon the actual legitimate prudent cost of the property used and useful for the service in question.~~

Note. This section, as enacted by Congress, is also Section 6 of The Natural Gas Act, with the substitution of the descriptive words "natural gas company" for the words "public utility."

APPENDIX E.

COMMENT UPON AND ANALYSIS OF VARIANT POSITIONS AND CONTENTIONS OF FEDERAL POWER COMMISSION WITH RESPECT TO THE PRINCIPLE OF "FAIR VALUE" AS THE RATE BASE OF ELECTRIC AND GAS UTILITIES.

During the eight-year period from the effective date of the Federal Power Act (August 26, 1935) and the effective date of the Natural Gas Act (June 21, 1938) to 1943, the Federal Power Commission has taken various and divergent positions in its decisions, reports, briefs and other public announcements, as to the proper and lawful rate base of those utilities over which it has rate-regulatory control under the Federal Power Act and the Natural Gas Act. The eight-year period, under the circumstances, divides itself into three shorter intervals, to-wit: (A) Years 1935-1940, (B) Year 1940, and (C) Years 1941-1943.

(A) YEARS 1935-1940.

During this period the Power Commission accepted the principle of "fair value" as controlling, and made no contention that Congress, either in the Federal Power Act or in the Natural Gas Act, abrogated the principle of "fair value" or established, or authorized the Commission to establish, the so-called "actual legitimate prudent cost" rate base. This is evident from the following:

(1) The Commission, reporting for the year 1935, declares:

> "The Public Utility Act of 1935 deals with a twofold problem. In title I of the new statute the Congress has asserted its jurisdiction over the financial structure and practices of holding-company systems with a view to the elimination of the economic burdens which holding-company control had placed upon local operating utilities. In title II the Congress has established regulatory control over the interstate activities of electric utilities which were beyond the constitutional or effective administrative control of the States, and has set up machinery for Federal assistance to State regulatory bodies in their efforts to accomplish effective public regulation.

"New Powers Conferred Upon the Commission"

"The authority to fix rates over that part of interstate energy which is sold wholesale for resale is one of the powers conferred by title II upon the Commission. This power was held to be beyond the authority of the States by the United States Supreme Court in *Public Utilities Commission v. Attleboro Company*, 273 U. S. 83. The object of this provision is to insure reasonable wholesale rates and to prevent interstate companies from discriminating in favor of consumers of one State at the expense of consumers of another State. The act does not give the Federal Commission any authority over local rates for electric service, this function being reserved exclusively to the States."

Annual Report, 1935, Federal Power Commission, pp. 1-2.

(2) The Commission, reporting for the year 1937, states:

"Prudent Investment Rule in Rate-Making Urged Upon the Supreme Court"

"During the past generation the growth of public utility operations has raised complex administrative problems not the least of which has been the evolution of an adequate workable rule for fixing some base upon which to predicate fair rates of return that would insure financial stability to operating companies and provide consumers with efficient service at reasonable rates. The fact that no adequate and workable rule has been evolved has been due in large part to an interpretation placed by the Supreme Court upon the fair value of utility property for rate-making purposes, in a line of decisions starting with the case of *Smyth v. Ames*, decided in 1898.

"As this issue, important alike to this Commission and to State regulatory agencies throughout the country, was involved in the case of *Railroad Commission of the State of California v. Pacific Gas and Electric Company*, pending before the United States Supreme Court, the Federal Power Commission, by leave of the Court, was permitted to file a brief *amicus curiae*, and its general counsel to appear in oral argument when the case was heard on November 11, 1937.

"This Commission entered the case for the purpose of defending the constitutionality of the prudent investment principle and to urge that the Court reverse the doctrine of *Smyth v. Ames*, adopted 39 years ago, *which requires consideration of reproduction cost as an element in determining the fair present value of utility property for rate-making purposes.*

* * * * *

"Under the Federal Water Power Act of 1920 public utility companies securing license *were required to consent* to the use of net investment (the statutory equivalent for prudent investment) in the licensed project as a rate base in those situations in which the Commission could prescribe rates. The amendment of 1935 placing under the jurisdiction of the Commission interstate electric utilities did not expressly prescribe prudent investment as the base for rate-making purposes, but if the Supreme Court should approve as constitutional the theory of rate making for which the Commission is contending, the language of the amendment of 1935 would be sufficiently broad to enable the Commission to apply the prudent investment rule in fixing those rates which it is authorized to regulate.

"The Commission pointed out that since the Commission is standing on the threshold of a new era of Federal regulation involving an industry which for the first time has been subjected to the regulatory power of the Congress and is faced with the important function of rate making, it is deeply concerned in the establishment of a legal principle which will be consistent with and not obstructive to a sound administration of the rate-making power.

"The position taken by the Commission is that *if it is to be required under the Constitution, in fixing electrical rates to consider reproduction cost as an essential element in the determination of a rate base* its administrative task will be well-nigh impossible of performance. It expressed the belief that a sound basis—sound in administration, in economics, and in law—upon which the public utility properties should be valued for rate-making purposes is the prudent investment in those properties, and

that such a basis is entirely consistent with the requirements of the 5th and 14th Amendments of the Constitution.

"It was urged upon the Supreme Court that the rule of *Smyth v. Ames*, however much it may have been justified when applied to the facts of another generation, has no justification in economics or in law when applied to the realities of the present day." (Emphasis ours.)

Annual Report, 1937, Federal Power Commission, pp. 10-11

(3) The Commission, reporting for the year 1938, says:

"The decision of the Supreme Court in the case of *Railroad Commission of the State of California v. The Pacific Gas and Electric Co.*, in which the Commission filed a brief *amicus curiae*, and its general counsel participated in oral argument, adopted the view which the Commission had urged upon the Court that the Railroad Commission of California, in refusing to give any probative weight to evidence of reproduction cost in determining the proper rate base, had not deprived the Pacific Gas and Electric Co. of due process of law. The Supreme Court remanded the case to the District Court with instructions to make findings as to whether the rate fixed by the State Commission resulted in confiscation of the company's property. It is extremely significant that, upon remand the District Court held that the rate base fixed by the Railroad Commission of California, without giving effect to evidence of reproduction cost of the company's properties, was a proper basis upon which to permit the company a reasonable rate of return."

Annual Report, 1938, Federal Power Commission, pp. 30-31.

(4) The Commission in its decision in case of *City of Los Angeles v. Nevada-California Electric Corp.*, Jan. 25, 1940, 32 P.U.R. (n.s.) 193, in determining a rate base and fixing the rates of the corporation therein involved, *did not declare, and so obviously had not then discovered, as now claimed,* that five years earlier in 1935 Congress had discarded the principle of "fair value" as the utility rate base under

Section 208 of the Federal Power Act. The Commission, at page 203 of 32 P.U.R. (n.s.) declares:

"However, we believe the original cost of construction of the Boulder canyon line is the best evidence of the amount to be used as a rate base in this proceeding."

The Commission cites in support of this conclusion: *Clark's Ferry Bridge Co. v. Pennsylvania Public Service Commission* (1934), 291 U. S. 227, 54 S. Ct. 427, wherein this Court held, in recognition of the governing principle of "fair value," that under the facts in that case the "reasonable cost of the structure furnished a proper basis for determining its *fair value*." (Emphasis ours.)

Comment: Thus, as late as the early portion of the year 1940, the Power Commission had not undertaken to outlaw "fair value" either in its annual reports or in its decisions.

(B) YEAR 1940:

The Commission, reporting for the year 1940, proclaims:

"Space does not permit an extended discussion of all the details inherent in the regulatory problem. *Suffice it to say that the complications resulting from the 'fair value' theory, with its reproduction costs, its going value, its observed depreciation, etc., pose but a part of the problem which constantly confronts those charged with the responsibility for making regulation reasonably effective in the public interest.*

"The machinery for handling the regulatory problem cannot safely be confined to old methods. The regulatory agency is in fact a 'tribunal of the people' designed to 'furnish protection to rights and obstacles to wrongdoing which, under our new social and industrial conditions, cannot be practically accomplished by the old * * * procedures' used in dealing with adversary suits in the law courts.

* * * * *

"The following important developments in rate making policy are reflected in the Commission's formal decisions issued during the last year:

"1. *The insistence by the Commission on a prudent investment rate base.*" (Emphasis ours.)
Annual Report, 1940, Federal Power Commission, pp. 13, 62.

Comment: It is to be observed that in 1940 the Commission, in seeking to revolutionize the law of rate base, *was undertaking to do so on its own power.* It is significant that *at that time* no contention was made that the governing principle of "fair value" had been cast aside and abrogated in the Federal Power Act (1935) or the Natural Gas Act (1938).

(C) YEARS 1941-1943.

(1) Thereafter, beginning with the case of "*In the Matter of Chicago District Electric Generating Corporation,*" *supra,* (July 16, 1941), the decisions of the Commission departed radically from its own previous announcements, as well as the law of the land. The Commission, *In the Matter of Cities Service Gas Company* (July, 1943) (50 P. U. R. (n. s.) 65) expressly excludes and discards all evidence of "fair value," under the asserted authorization of Section 6(a) of the Natural Gas Act, and declares, by its reference to *The Matter of Chicago District Electric Generating Corporation, supra,* that such also was the intent and effect of its earlier ruling in that case, *and that Congress so intended and enacted in 1935.*

(2) However, and strangely, in 1942, in the two extensive briefs filed by the Commission in this Court, in *Federal Power Commission v. Natural Gas Pipeline Company,* 315 U. S. 575, wherein the Commission renews extensively its attacks upon "the doctrine of *Smyth v. Ames*" (See *Railroad Comm. v. Pacific Gas & Electric Co.* (1938), 302 U. S. 388; *Driscoll v. Edison Light & Power Co.* (1938), 307 U. S. 104), no slightest suggestion was made that Congress, *as now contended,* had established or authorized the so-called "actual legitimate prudent cost" rate base and discarded and abrogated "fair value" as the controlling principle, in the Federal Power Act and the Natural Gas Act.

(3) Counsel for the Power Commission appearing before the Public Utility Section of the American Bar Association in August, 1942, asserted in reliance on the special con-

curring opinion of Justices Black, Douglas and Murphy in the *Natural Gas Pipeline Company* case, *supra* (March 16, 1942), that fair value had been discarded and abrogated in that case. This assertion is made despite the statement of the Justices: "As we read the opinion of the court, the Commission is now freed from the compulsion of admitting evidence on reproduction cost, or of giving any weight *to that element of fair value.*" (Emphasis ours.) Commission Counsel declared with finality:

> "I look forward with avid anticipation to the gymnastics—intellectual or otherwise—with which some of you here who represent the industry may attempt to dispel the rigor mortis of fair value which set in on March 16, 1942."

It seems evident that Counsel was not certain of his conclusions as to the force and effect of this Court's opinion in that case. Perhaps he had read the significant language of *Chief Justice Stone*, speaking for six members of the Court, who at page 590 of 315 U. S. declared: "*The total value* of the companies' plant, including equipment in excess of immediate needs when beginning business, has been included in the rate base adopted." (Emphasis ours.) For here is the express recognition of the application of the principle of value in that case.

And so later in his address we find Counsel declaring:

> "*Consider first the pattern set by the Federal agencies.* No one can avoid the plain unvarnished fact that as far as both the Federal Power Commission and the Securities and Exchange Commission are concerned, fair value has been relegated to the limbo of outmoded doctrines." (Emphasis ours.)

Comment: Not Congress nor the Courts, but "the federal agencies," identified as the Federal Power Commission and the Securities and Exchange Commission, it seems have "relegated to the limbo of outmoded doctrines" the principle of "fair value."

Conclusion: The above summary of Power Commission position and decision, prior to the decision of this Court in the *Hope Natural Gas Company* case, as to *rate base* supplements the impressive legislative history showing that that

body deems itself either exempt from the restraints of law or possessed of a virtually unlimited "discretion." In either event the lawful source of such asserted authority is not disclosed. In fact the entire absence of such authority is affirmatively established by the unambiguous terms of *Section 6* of the Natural Gas Act and *Section 208* of the Federal Power Act. The statutory construction indulged by the Commission involves and requires both additions to, eliminations from and substitutions for the statutory words and concepts to produce the meaning urged by it. The Commission "construction," so-called, amounts to far-reaching administrative legislation, nothing less and nothing else.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1944.

No. 575

COLORADO-WYOMING GAS COMPANY, a corporation, PETITIONER,

vs.

FEDERAL POWER COMMISSION; COLORADO INTERSTATE GAS COMPANY, a corporation; CITY & COUNTY OF DENVER, COLORADO; PUBLIC SERVICE COMMISSION OF WYOMING; PUBLIC SERVICE COMPANY OF COLORADO, a corporation; and CANADIAN RIVER GAS COMPANY, a corporation, RESPONDENTS.

REPLY BRIEF OF PETITIONER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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NOVEMBER, 1944.

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REPLY BRIEF OF PETITIONER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

THE QUESTIONS PRESENTED.

Commission counsel declare the only issues which are presented herein are the questions of jurisdiction, allocation and whether the reduced rates ordered by the Commission are "just and reasonable" *(Comm. Br. p. 2)*.

To each of these issues counsel adroitly devote about a page of carefully selected words of assertion and implica-

tion and quotation from the Commission order. Clearly these issues of admitted significance, as well as other issues also of significance, including those addressed both to the meaning and propriety of this Court's opinion in the *Hope Natural Gas Company* case cannot be settled by the mere silence of an order denying certiorari, which this Court is urged by the Commission to enter.

Here again, if the contentions of this petitioner, involving basic issues of government under constitutional and enacted law, are without merit, the absence of that merit can be shown convincingly and can be readily stated. That the opinion in *Hope Natural Gas Company* case is in fact a *radical departure* from the past, including the immediate past next prior to *January 3, 1944*, certainly is not and cannot be controverted. It is universally so understood by *all* who have given consideration to that opinion of this Court. It would seem, therefore, that "A decent respect for the opinion of" the American people and of both the federal and state judiciaries as well "requires" this Court "to declare the reasons that impel" it and the authority which permits it thus to remold, or appear to remold, the ordered and orderly structure, powers and duties of American government established by "We the people" and by Congress "in pursuance thereof," in which body "all legislative power * * is vested."

The issues as to scope of review, presumption on review and the substantive standards which govern Commission and Court *(Pet. Br. pp. 24-44)* are airily disposed of on the ground that those "questions involve alleged errors in recent decisions of this Court which we deem unnecessary to discuss". *(Comm. Br. p. 7)*.

Heretofore, the Commission habitually has been quite vocal in its views for and against the opinions of this Court, and particularly in support of dissenting opinions. Does the present silence suggest an entire confidence that, whether the *Hope Natural Gas Company* opinion be correct or erroneous, it will not be disturbed, or can it be that the Commission presently does not have adequate answer to the contentions of this petitioner respecting such issues of law?

With respect to petitioner's discussion of the foregoing issues of law, which directly relate to the judicial duties of

this Court and its lawful authority in the premises, counsel claim to find that "the petitioner does not discuss the 'impact' and 'end result' of the Commission's order, and by its argument *(Pet. Br. pp. 22-44)* impliedly concedes that the rate reduction prescribed by the Commission meets this standard" *(Comm. Br. p. 10)*. Such an assertion had better have been left unstated, for no person who reads and understands language could possibly conclude *from petitioner's petition and argument*, or any part thereof, anything other than that the Commission procedure and order in this case is both illegal and lawless, in concept, in detail, in conclusion, in "impact," in "end result" and "in consequences." The numerous and specific grounds and reasons supporting petitioner's contentions are set forth. These the Commission and its counsel meet by silence. Rationalization, reasoning and argument are not clever and irresponsible mental devices and avenues to attain a desired end. Inherent therein is the quality of integrity of thought requiring consideration of and regard for both facts and principles.

Next following the above quoted sentence, counsel declare: "In any event, the financial history of petitioner would not sustain an argument that the Commission's rate order is not 'just and reasonable'" *(Comm. Br. p. 10)*. To this statement and the ensuing discussion and assumptions of counsel we will advert, *post*.

The factual questions presented, to-wit: original cost, service life, accrued depreciation, going value and rate base also are brushed aside in silence or by mere assertion that they are "without merit" or that the Commission action is "supported by substantial evidence" *(Comm. Br. pp. 2, 7, 12)*. These were presented and discussed briefly in petition for certiorari and supporting brief, *upon the record facts and the applicable decisions of this Court.*

CERTAIN OF THE RECORD FACTS.

The answering brief of the Federal Power Commission requires correction both of statement and of implication to produce conformity with the record facts and the applicable law.

Character of this Proceeding.

This case is not part of a "consolidated proceeding" *(Comm. Br. p. 3),* involving also Canadian River Gas Company and Colorado Interstate Gas Company (petitioners before this Court, in cases Nos. 379 and 380, this Term). The proceeding against this petitioner *throughout* has been entirely separate from and independent of the proceedings against the companies above named, which companies are entirely separate from and independent of this petitioner, in management, control and operation. The three proceedings, however, were by order of the Commission consolidated *"for purposes of hearing thereon" (R. V. 1, pp. 41-44).* Thereafter and notwithstanding the attempted consolidation of the hearings, the proceeding against this petitioner *in fact* was heard by the Commission examiner as a wholly independent matter. A separate and distinct record was made before the Commission, and thereafter this case was presented to the Circuit Court of Appeals and now to this Court on that independent record. While certain general principles of law were common to the three cases, none of the issues in this case were common or identical, either in fact or in law, with the issues in Canadian River Company and Colorado Interstate Gas Company cases. The briefs before the Commission, before the Court of Appeals and now before this Court attest to that fact.

Throughout this proceeding, despite the independence of companies, of issues and the separation of hearing and record, both the Commission and its counsel, by action, implication and statement *whenever* it has *suited,* have assumed such identity of issue between the three cases and the three companies themselves, with the result that several of the substantial issues affecting this petitioner have been ignored, by-passed and disposed of in silence or by evasion. The footnote *(Comm. Br. p. 12)* renders lip service to the mere *formalities* of "due process." Obviously, it is intended thereby to assure this Court that throughout, this petitioner, *as a separate and independent litigant,* was accorded that separate and independent treatment to which, as a separate and independent litigant, it was and is entitled by law. But the Commission procedure and order are not predicated upon any such separation in fact or in substance, as counsel in their footnote suggest to this Court. That

footnote suggestion is directed only to "the 'due process' contentions advanced by the petitioner." It, of course, has no place in their argument, when the Commission disposition of the issues of "jurisdiction" and "allocation", for example, is being defended. In the latter connection the argument of counsel is directly to the contrary, to-wit: that instead of being "separate," this petitioner Colorado-Wyoming Company is part and parcel of Colorado Interstate and Canadian River companies *(Comm. Br. pp. 3, 8, 9)*. So we find the Commission on the opposite sides of the same question of separation in its presentation before this Court, as heretofore throughout this case. This sort of procedure is not the *substance* of due process,—"the rudiments of fair play."

The order of rate reduction entered against this petitioner is separate, distinct and *in no manner* conditioned by the orders entered against Canadian River and Colorado Interstate companies *(R. V. 1, pp. 87-90, 90-94, 94-97)*. The order in this case reduces the annual revenues of petitioner Colorado-Wyoming company $119,000 as of 1939. This order is *absolute in its terms* and does not depend upon the final disposition of the Canadian River and Colorado Interstate cases. It is true that, if the orders in those two cases are affirmed, this petitioner will receive a credit of $98,000 in the annual cost of purchased gas as an offset against the $119,000 *(Comm. Br. p. 11)*. But if the orders in the other two cases be set aside, petitioner has no basis to assume that the Commission (to the orders of which body this Court appears to attribute the quality of virtual finality) would make a "pragmatic" or other adjustment of its order against this petitioner.

In any event, $21,000 *a year* to this small petitioner is substantial, and will recur and accumulate from now on year after year. This pyramiding process will produce a very substantial and imposing ascending total. This is true for the reason that, in the event of affirmance, the Commission theories and conclusions, as applied in this case, become final and *res adjudicata* with respect to jurisdiction, original cost, accrued depreciation, rate base, allocation and all other issues actually adjudicated.

Commission "Original Cost."

The Commission "original cost," *despite the silence* of the Commission in its order and the silence of counsel in their brief *is not the actual* original cost in fact or as shown by the books of petitioner *(Op. Comm. R. V. 1, p. 53)*.

Commission counsel state with respect to engineering design and construction services in the amount of $83,000 that that item "was questioned by the staff in accordance with the Commission's established rule of 'no profits to affiliates' and, as the record shows, the Commission made an ample allowance for engineering services and expenses (R. III, Ex. 199, p. 84)." *(Comm. Br. p. 12)*

The Commission *excluded* from its so-called "original cost" as "computed" by Commission witness *Vaught, all charges for design and construction engineering* (Test. Comm. witness *Vaught, R. V. 1, pp. 287-288, 203)*. This was a part of the *actual* "cost or gross investment" of Colorado-Wyoming Company in the amount of $82,793 *(R. V. 2, p. 551, R. V. 3, Comm. Ex. 199, p. 4)*. They do not dispose of *the fact* that design and construction engineering services are *essential* in the building of every natural gas pipeline transmission and distribution system, and a necessary part of the "original cost" of every such system.

The fact that such services were rendered by, and payment therefor made to an affiliate, may raise the question for consideration as to whether the amount of the payment made to such affiliate was reasonable. But the *fact* remains that such services were necessary and must be incorporated in any real determination of actual "original cost." In this case, *this* integral part of "original cost" is eliminated and ignored by the Commission without as much as a reference thereto *(Op. R. V. 1, pp. 52-53)*. Nevertheless, the so-called "original cost" as "allowed" by the Commission is paraded as the *entire* "original cost" *(Op. R. V. 1, p. 53)*.

Counsel nevertheless find it necessary to undertake to compromise the issue by referring to certain specific engineering items and other non-engineering overheads which were not excluded. They refer for support to *Commission Exhibit 199*. Yet they overlook the fact that such exhibit

was prepared and presented by Commission witness *Vaught*, who on cross-examination testified that after the elimination by him (adopted by the Commission) of the "5% engineering fees" of $82,793, "there are no charges of any kind covering designing and construction engineering in any amount, so far as he knew" *(R. V. 1, p. 203)*.

Even if the burden was upon the Company to justify as reasonable the particular contract with its affiliate for such services, that did not meet or discharge the burden "incumbent" on the Commission *(Op. R. V. 1, p. 79)*. In arriving at a rate base even under its own erroneous theory of rate base, it was required both by law and equity to include the reasonable cost or value of this vital and necessary element of design and construction engineering. Even a so-called "original cost" determination is not complete without it.

Such a procedure as *the entire elimination* of all engineering design and construction is not a pragmatic adjustment. It is the total repudiation of property rights. If 5% be *found* to be unreasonable, the pragmatic adjustment is the determination *from evidence* of such lesser amount as is *found* to be reasonable.

"Going Value."

"Going value" was summarily disposed of by the repudiation *as a matter of law* of that element of plant and property value as "without merit" *(Comm. Br. p. 12)*, on the statement "this Commission and other regulatory agencies in general have consistently condemned * * * such fictitious element of value" *(Op. Comm. R. V. 1, p. 68)*, despite numerous decisions of this Court to the contrary, which decisions, so far as this petitioner can learn, have not been overruled (See *Los Angeles Gas & Electric Corp. v. Railroad Commission*, 289 U.S. 287, 53 Sup. Ct. 637; *Driscoll v. Edison Light & Power Co.*, 307 U.S. 104, and *Denver Union Stockyards Co. v. United States*, 304 U.S. 470, 58 Sup. Ct. 990).

Counsel cite *Federal Power Commission v. Natural Gas Pipeline Company*, 315 U.S. 575, 589, on the proposition that "there is no constitutional requirement that going concern value * * * must be separately stated and appraised as such." With that statement of this Court we have no contro-

versy but, as pointed out specifically and documented, "going concern value" was not allowed in this case *in any form*. The Commission witness *Vaught* testified expressly to that effect. (See *Open. Br. Pet. pp. 50-53.)*

"Service Life" and "Accrued Depreciation."

The Commission *in fact* made no determination of "accrued depreciation" whatever. It merely advanced arguments and indulged conclusions as to the soundness of the theory of service life to determine accrued depreciation *(R. V. 1, pp. 59-61, 65)*. The Commission so-called "accrued depreciation" is a simple arithmetic proration of the *assumed* "service life" adopted by it *(Comm. witness Smith, R. V. 2, pp. 531, 556-562, Comm. Br. p. 4)*. Throughout this case this petitioner has contended, and documented that contention by specific consideration and analysis of *all* the relevant evidence in the record, that the adopted "service life" is without the support of "substantial evidence." Both Commission and its counsel consistently have evaded consideration of the basic facts essential to an *adjudicated* determination of service life *(Op. Comm. R. V. 1, pp. 59-61, 65)*. It would seem to be both sound and easy to dispose of that issue by an examination and presentation of the evidence, in the event that the Commission conclusion is supported by "substantial evidence," as now for the first time is asserted by counsel in one brief sentence *(Comm. Br. p. 12)*. Why then such hesitation and refusal to meet a material *factual* issue, directly and specifically?

It would appear both desirable and important, therefore, that this Court at this time should have some understanding of the *Commission* evidence which this petitioner contends amounts to sheer guess and speculation. What then does the evidence show, for example with respect to pipelines, *which constitute about 80% of the Company plant*, whether measured in cost or in value? As to the service life of pipelines, the Commission admits there is serious controversy *(Op. Comm. R. V. 1, p. 65)*, and then without findings or even consideration of the facts upon which such service life must be predicated, proceeds as though the service life assumed by it had been established by evidence.

On the subject of "depreciation," the Commission opinion is peculiarly inept *(R. V. 1, pp. 59-61, 65-66)*. The inevit-

able discovery made by reference to the evidence explains the resort to argumentative and paratactic generalizations, evidently prepared by the Commission accounting staff. The only Commission evidence which even purports to relate to the subject of depreciation is that presented by the witness *Copp (R. V. 1, pp. 462-503, R. V. 3, Comm. Ex. 200, Appendix).* To be sure, there was the Commission "depreciation accounting witness" *Smith,* but he admitted on cross-examination that he had no conception of what is meant by per cent condition, or loss of service value, and which he described as "absolutely meaningless" to him *(R. V. 2, p. 558).* The depreciation computation made by him *(Comm. Ex. 202, p. 10, R. V. 3, Appendix)* and adopted by the Commission in its opinion, "is an accounting entry based upon an engineering estimate of service life" *(R. V. 2, pp. 530-531, 556).*

The applicable principles and delineations repeatedly and uniformly declared by this Court and other courts and commissions throughout the land, including this Commission, in its definition of "depreciation" *(Uniform System of Accounts, p. 4)* are clear and settled.

"*Accrued depreciation*" *is a fact,* as this Court has declared repeatedly. It is the determination of the actual physical condition and loss of service value of the property of the utility subject to depreciation, and is to be ascertained as of the date of the rate inquiry, or as close to such time as is reasonably practical. It is not a matter to be determined and fixed by the application of theoretic and academic computations by accountants, or others with neither training nor experience in engineering, operation and management of natural gas companies.

Accordingly, inspections and examinations of the physical plant of petitioner were made in October, November and December, 1939, by Company engineers *Hancock* and *Willard* and Commission engineers, including the witness *Copp.* These Company and Commission inspections of pipelines were made at the same time, in manner and at 83 locations directed and approved by the Commission *(R. V. 1, pp. 381-382, 384, 386-387, 451-453, 463-467).*

The Company presented in evidence the detailed findings

and conclusions of its engineers resulting from such inspections and examinations. *(R. V. 14 pp. 381-450, 451-459, Ex. Nos. 107-110, pp. 382-391; R. V. 3, Ex. 111, Appendix.)* The arithmetical average per cent condition or loss of service value shown by property classifications was: Pipe Lines 92.46%; Compressor Stations 93.04%; Measuring Stations 94%; Regulators, Meters and Main Line Services 88%; Minor Items of Personal Property (office equipment, automobiles, tools and telephone line) 72% *(R. V. 1, pp. 385-387, 451-452)*. The overall average service value of all property was found to be 92.24%; the "loss of service value" or "accrued depreciation" of 7.76% *(R. V. 3, Ex. 111, St. No. 2)*.

The Commision in its opinion conveniently omitted all reference to "accrued depreciation" as a fact and to the evidence on that subject *(R. V. 1, pp. 59-61)*.

The Commission offered no evidence whatever on the subject of present service value or per cent condition of the Company's depreciable plant and system, although it is to be borne in mind that the engineers for the Commission, including the Commission witness *Copp*, inspected the pipeline system of the Company, at the same time and at the same 83 inspection holes as approved and designated by the Commission, presumably for the purpose of determining the then service value or condition of the pipeline system.

The Commission did, however, offer in evidence, through its engineer *Copp*, what was described as "Colorado-Wyoming Gas Company—Determination of Composite Service Lives" *(Ex. 200, R. V. 3, Appendix)*.

It is these service life estimates which petitioner contends are without the support of substantial evidence. And it is these service life estimates from which, by simple proration *(R. V. 2, pp. 556-559)*, the Commission arrives at its so-called "accrued depreciation" of 23.52% *(R. V. 1, pp. 66, 53)*.

Before considering the character of this study and its value in this case, it is to be noted that as to "the causes to be given consideration" in the determination of depreciation, as detailed in the definition of depreciation *(Uniform*

System of Accounts, Definition 14, p. 4), the witness *Copp* testified fully.

"Wear and tear, decay, action of the elements," of course, were related directly to the inspection and examination of the property, made both by the witness *Hancock* and the witness *Copp*. *Copp* testified that he made the same eighty-three inspections, as did the witness *Hancock*, and stated, "It carried some weight, exactly how much I don't know * * *." *Copp* made no definite checks as to inadequacy. He stated it was unimportant and was considered "but was not given much weight." Obsolescence as an element was considered practically negligible and given but "slight weight." "Changes in the art" did not enter into consideration with either the witness *Hancock* or the witness *Copp* as a factor of any consequence. "Changes in the demand and requirements of public authorities," *Copp* considered inconsequential and gave it "slight weight." Exhaustion of natural resources relating to the gas supply of Colorado-Wyoming Company was considered without importance by the witness *Copp*, both in relation to the Wellington Field, now exhausted, and the present supply obtained from Colorado Interstate Company, because he assumed the life of the gas supply was greater than the maximum service life which he assigned to any part of the Company's property. Under "other causes," *Copp* considered "substitute fuels", which he classed in importance "a little more than slight." Similarly, "floods and storms" were given very slight weight, based on the Company's experience. "Maintenance and retirements" were considered by the witness *Copp* as having but "slight" weight. The experience of other pipeline companies was considered to a very minor extent.

(R. V. 1, pp. 470-483, 492-500.)

From a review of this portion of the testimony of the witness *Copp*, it appears that these various causes or factors referred to were entirely inconsequential elements, and with this particular conclusion of that witness we see no occasion to disagree. In 1939 none of petitioner's plant was more than 15 years old and by far the greater portion of it was of less age than 10 years *(R. V. 3, Ex. 111, Sh. No. 4)*.

Now, passing to a consideration of *Commission Exhibit 200*, wherein it is attempted to establish what is termed "Composite Service Lives" of the property of Colorado-Wyoming Company, the witness *Copp* testified at the very outset of his cross-examination that such exhibit was not prepared or offered to show "the then condition of the property" at the time of his inspection thereof, but only "for the purpose of annual depreciation charges" *(R. V. 1, pp. 468-469)*. He testified that the various factors considered by him were used as "guides," and that in determining service life his conclusions were "based primarily on the physical life." "The physical life was given one of the greatest weights." *(R. V. 1, p. 469)*. "We have given the physical life of the pipe considerable weight in determining the service life" *(R. V. 1, p. 484)*. "The deterioration was considered as the principal factor" *(R. V. 1, p. 485)*; however, no evidence of either physical life or deterioration was offered. The specific factors to which reference has already been made were given that slight and nebulous weight indicated which, in effect, amounts to no weight whatever.

"A. We determined a physical life for each of the different sizes of pipe in the line and then we arrived at a composite for all of them.

"Q. You mean total physical life?

"A. That is correct.

"Q. And you looked on that in 1939—you looked back at 1928 and looked forward to '88, something like that—

"A. That is right.

"Q. Standing in the middle you say "There it is, and here it is, and this is the total"?

"A. That is right.

"Q. Now, that assumes what—a perfectly uniform set of conditions during the whole period, does it?

"A. That is right.

(R. V. 1, pp. 485-486.)

By such a procedure the Commission witness looked around at the system, and casting his eyes to the horizons of the past, the present, and the future, speculated as to what had happened and what would happen in the future through an extended range of years. Naturally the witness was unable to testify even generally as to the facts, factors and methods producing his service life estimates, for the obvious reason that such support was wholly lacking. Thus, the opinions of an expert in this instance become, in reality, merely the speculations of a guesser. While a service life determination cannot be precisely or mathematically accurate, yet being essentially a fact determination, it must be rooted in actuality to be acceptable for any purpose.

The witness stated he had "certain guide calculations" which were three in number. With respect to the main transmission line, by the first method he found an approximate service life of 137 years; by the second method, 100 years; and under the third method, 55 years. Having arrived at these conclusions, the witness found a new undisclosed formula, and finally arrived at a 50-year composite service life for the main pipeline. The main line includes 10-inch, 8-inch, 6-inch pipe and some 2-inch pipe. With respect to the lateral lines, which include sizes which range from 8-inch down to 1-inch by the first method he arrived at a composite service life of 164 years; by the second method, 92 years; and by the third method, 35 years; and thereafter finally determined a service life on the lateral lines of 40 years.

(R, V. 1, pp. 491-494.)

A few observations with respect to *Copp's* service-lives estimate, it is believed, will be helpful to the proper consideration of the problem of depreciation. He gives the Fort Collins-Cheyenne 6-inch *main* line a service life of 50 years, *because it is main line*, while he gives the Colorado Portland Cement Company 6-inch *branch* line and the Loveland-Johnstown-Greeley 6-inch main *branch* line service lives of 40 years, *because he classes these lines as branch lines.* This, in face of the facts evident in the record, approaches the absurd. With respect to the Fort Collins-Cheyenne line, according to "depreciation accounting witness" *Smith (Comm. Ex. 201)*, that line in the ten-year

period (1930-1939) lost 20% of its service value, while in the same ten-year period the Loveland-Johnstown-Greeley line lost 25% of its service value.

Similarly, the Commission witness gave the 8-inch *main line* from Boulder Junction to Fort Collins a service life of 50 years, and the 8-inch Boulder *main line branch* a service life of 40 years, although both lines were laid in the same year, are the same size, have the same wall thickness, weigh the same and are of the same kind of pipe. So, in the ten-year period (1930-1939), according to the "depreciation accounting witness" of the Commission *(Comm. Ex. 201)*, the 8-inch main line utilized 20% of its service life, while in the same interval of time the 8-inch Boulder branch lost 25% of its service value. With respect to these lines, it is thus claimed that in 1970 the "expired service value" of the 8-inch Boulder line will be 100%; while the "expired service value" of the 8-inch main line will not be exhausted until 1980.

Such are typical applications of "the Commission's method." This may be accounting, but it is not "consistency," it is not "harmony," it is not "agreement" and it is not fact. Such procedure simply does not make sense.

It is elementary that an expert may give his opinion and conclusions upon a given set of facts. It is equally elementary that the opinion or conclusion of the expert must be based upon facts appearing in the record in which such conclusion or opinion is given. This record contains no facts whatsoever to support the service life estimates of the Commission's witness *Copp*. His conclusions, adopted by the Commission, are mere speculative guesses. Without attempting to cast any reflection upon the witness, so far as this record is concerned, the service lives given might just as well have been 25, 75, 100 or 137 years, and had he given any one of these figures, it could not be said that any one of them would not be as correct as the ones given.

COMMISSION JURISDICTION IN THIS CASE.

Commission counsel defend the assumption by the Commission of rate-regulatory jurisdiction over local "sales for resales" of petitioner in Colorado, as follows:

"The gas purchased by petitioner from the Colorado (Interstate Gas) Company originates in the Panhandle Field in Texas and flows through the interconnected pipeline of the Canadian Company and Colorado Company, from Texas, through New Mexico, to a point near Littleton, Colorado. There the gas flows without interruption into the main pipeline of petitioner, which runs approximately 114 miles to Cheyenne, Wyoming, where petitioner sells for resale to the Cheyenne Light, Fuel and Power Company. Petitioner's facilities also include compressor stations and a number of lateral lines through which sales are made in Colorado for resale. Sales are also made directly to industrial consumers in Colorado and in small quantities to two United States army posts" *(Comm. Br. p. 3)*.

"But under the decision of this Court in *Illinois Natural Gas Company v. Central Illinois Public Service Company*, 314 U.S. 498, 508, it is clear that in transporting Texas gas from Littleton, Colorado, and selling it at various 'city gates', in Colorado for resale petitioner 'engages in interstate commerce in gas and in its interstate transportation' within the meaning of the Natural Gas Act." *(Comm. Br. pp. 7-8)*

In short, this contention is that gas flows without interruption from Texas to the various "*city gates*" in Colorado at which gas is sold for resale by this petitioner, and that under the authority of the *Illinois Natural Gas Company* case, *supra*, the interstate transportation and commerce of Colorado Interstate Gas Company, which was complete at the Littleton "gate," nevertheless, extends to and embraces the local Colorado "city gate" sales of this petitioner.

Counsel ignore the fact that this argument of "flow without interruption" as a physical fact extends to the very burner-tip of the smallest domestic consumer in every Colorado city and town. By this argument, based upon the assumed continuity of flow of gas, the transaction by which each of such ultimate domestic consumers purchases gas also would be interstate commerce. It is, of course, immaterial, in connection with this discussion, that the Natural Gas Act does not cover such ultimate sales. The conclusion, never-

theless, is inevitable that *such sales*, under the argument of uninterrupted physical flow, now advanced by counsel, in principle and in fact, constitute interstate commerce. By the argument presently advanced by the Commission, there can be no *intrastate* commerce in natural gas (or electric energy) after that commodity has once passed across a state line. The result is, once in interstate commerce, always in interstate commerce. But see, *East Ohio Gas Co. v. Tax Comm.*, 283 U. S. 465, 51 Sup. Ct. 499, and cases therein referred to.

Furthermore, the reference by counsel to the *Illinois Natural Gas Company* decision is not apt. The quoted statement assumes that the facts of that case and of the instant case are identical. While it is true that "in the *Illinois case*, the Company's facilities were located wholly in the State of Illinois and it there purchased gas which had been brought into the state from Texas and Oklahoma" and that "the Company transported such gas to various city gates in Illinois where it was sold to distributing companies for resale." Yet, the essential facts are fundamentally different in the two cases. In that case, the Panhandle Eastern Pipe Line Company and Illinois Natural Gas Company "are operated as a single system for the production, gathering, transportation and sale in interstate commerce of natural gas, principally for resale, and it is not controverted that the separate corporate entities may be disregarded" for the reason that Panhandle Eastern and Illinois Natural "are under common control and ownership, and are operated as a single, interconnected and integrated system for the production, gathering, transportation, sale and delivery of natural gas" (*Detroit v. Panhandle Eastern Pipe Line Company*, (F.P.C. 1942) 45 P.U.R. (ns) 203, 207-208, 222). Thus, the Power Commission declared and found in a rate-regulatory proceeding involving both Panhandle Eastern and Illinois Natural companies. The rate reduction order in that case treated Panhandle Eastern and Illinois Natural as one corporation. The result, of course, was that the contract by which Panhandle Eastern sold gas to the Illinois Natural was completely ignored by the Power Commission as simply an intra-company transaction. The rate reduction order of the Commission, of necessity, was based upon the sales by

the single enterprise, at the various "city gates" in Illinois and elsewhere. The identity of the two companies is also reflected in the opinion of this Court in the case of *Illinois Natural Gas Company, supra*, where it is said "Appellant, an Illinois corporation, is a wholly owned subsidiary of Panhandle Eastern Pipe Line Company, *. * * That appellant and Panhandle Eastern are engaged in interstate commerce in the purchase and sale of the natural gas which moves in a continuous stream from points without the state into appellant's pipes within the state seems not to be open to question." (314 U. S. 498, 502, 503) That case, as pointed out by this Court in the *Hope Natural Gas Company* opinion, *supra*, related to the jurisdiction of the Commission over the extension of facilities under *Section 7* of the Natural Gas Act and not to the rate-regulatory authority under *Sections 4 and 5* of this Act. Similarly, the Circuit Court of Appeals for the 8th Circuit, in reviewing the order of the Commission in the rate-regulatory proceeding of Panhandle Eastern, states "The petitioners are Panhandle Eastern Pipe Line Company and its wholly owned subsidiaries, Illinois Natural Gas Company and Michigan Gas Transmission Corporation. Their separate holdings constitute a single system for the gathering, transportation and sale of natural gas, and appropriately may be regarded and referred to as though jointly owned and operated by the petitioners" *(Panhandle Eastern Pipe Line Company v. Fed. Power Comm., 143 Fed. (2d) 188, 190)*.

The facts in the instant case are totally and fundamentally different, in that petitioner, Colorado-Wyoming Gas Company, as pointed out in our brief supporting petition for writ of certiorari herein, is entirely separate and independent in management, control and operation from Colorado Interstate Gas Company, and throughout the proceeding was so recognized by the Commission as wholly separate from and independent of Colorado Interstate Gas Company, save only that the Commission resorted to the fiction of "integration" for purposes of enlarging its jurisdiction and for purposes of allocation. The petitioner is and has been merely a purchaser of gas from the Colorado Interstate Gas Company and nothing else at any time. This petitioner has no part, in fact or in law, in the production

of the gas in Texas by Canadian River Gas Company or in the transportation of it from Texas to the Littleton "gate" by Colorado Interstate Gas Company. This entire and complete independence of the three companies is recognized throughout the opinion and the order of the Commission in this case.

The purchase of gas by this petitioner at Littleton, Colorado, from Colorado Interstate Gas Company is regulated by the Commission order fixing the Littleton "gate" price (*Colorado Interstate Gas Company v. Federal Power Commission, et al.* now pending upon petition for writ of certiorari in this Court, No. 380 this Term). The Littleton sale and purchase completed the interstate transportation and commerce involved in the movement of gas from the Texas Panhandle Field to Littleton, Colorado. That sale and purchase is identical with the Attleboro sale and purchase of electric energy in the case by that name. Such purchase and sale at Littleton was not subject to state authority and, as stated by the Congressional Committee and by this Court, that purchase at the end of the interstate journey was the transaction sought to be subjected to federal regulation by the Natural Gas Act, as in the Federal Power Act. The very fact that the Commission could and did regulate the Littleton "gate" price was a determination and adjudication that the gas transported in interstate commerce from Texas had reached the destination of its interstate journey at the Littleton "gate." If it were a fact that Colorado Interstate Gas Company and Colorado-Wyoming Gas Company constituted an integrated system under the same ownership, management, control and operation as in the *Panhandle Eastern and Illinois Natural* case, then there would have been no authority in law to assert jurisdiction to fix the Littleton "gate" rate, for the reason that the transaction in such situation would have been simply an intra-company matter. In the *Panhandle Eastern* case, *supra*, because the *Panhandle Eastern* and *Illinois Natural* companies were in fact and in law one company and one enterprise, "the separate corporate entities" were disregarded and properly, with the result that the only rates for natural gas upon which the rate-regulatory authority of the Commission could operate were the local city "gate rates" in Illinois. The contrary is true in fact and in law in this

case. It is only because this petitioner and Colorado Interstate Gas Company were and are separate and independent in all respects, that the Commission had authority to determine the Littleton "gate" rate and did exercise that authority.

The contention of counsel when examined on principle and by reference to the *Illinois Natural Gas Company* case, *supra*, relied upon by counsel, falls of its own weight, because that contention depends upon assumptions contrary to the record facts in this case. Here the Colorado "city gate" rates are purely local to Colorado, once the Littleton "gate" rate to this petitioner has been determined and fixed by the Commission.

THE SCOPE OF JUDICIAL REVIEW, THE PRESUMPTION ON REVIEW, AND THE SUBSTANTIVE STANDARDS CONTROLLING COMMISSION AND COURT.

Petitioner again directs the attention of this Court to the significant questions relating to the *prescribed* scope of judicial review, the *character* of the presumption on review in favor of the Commission action, and the *substantive* standards controlling Commission and Court in the exercise and review of the rate-regulatory authority under the Natural Gas Act, as to which the Commission now is silent *(Comm. Br. p. 7)*. These questions require consideration of the constitutional principles and legislative mandates respecting, defining and controlling the duties and powers of the administrative and judicial branches of the federal government. To neither the administrator nor the judge is delegated legislative choice.

This Court most recently, in the *South Eastern Underwriters Ass'n case*, had occasion to review and again to declare that Congress, having power to enact, *and Congress having done so*, this Court has no function to supervise the wisdom or policy of such legislation, and that whether the errors thought to have been committed by Congress were those of commission or omission, yet this Court cannot refuse to respect the action of the legislative branch if within the constitutional power of that body.

We quote from the opinion of *Mr. Justice Black*:

"Appellees argue that the Congress knew, as doubtless some of its members did, that this Court had prior to 1890 said that insurance was not commerce and was subject to state regulation, and that therefore we should read the Act as though it expressly exempted that business. *But neither by reports nor by statements of the bill's sponsors or others was any purpose to exempt insurance companies revealed.* And we fail to find in the legislative history of the Act an expression of *a clear and unequivocal desire of Congress to legislate only within that area previously declared by this Court to be within the federal power.* • • • *We have been shown not one piece of reliable evidence that the Congress of 1890 intended to freeze the proscription of the Sherman Act within the mold of then current judicial decisions defining the commerce power.* On the contrary, all the acceptable evidence points the other way. • • •"

• • • • •

"• • • *Whether competition is a good thing for the insurance business is not for us to consider. Having power to enact the Sherman Act, Congress did so; if exceptions are to be written into the Act, they must come from Congress, not this Court.* And as was said in answer to a similar argument that the Sherman Act should not be applied to a railroad combination:

"'It is the history of monopolies in this country and in England that predictions of ruin are habitually made by them when it is attempted, by legislation, to restrain their operations and to protect the public against their exactions. • • •

"'*But even if the court shared the gloomy forebodings in which the defendants indulge, it could not refuse to respect the action of the legislative branch of the government if what it has done is within the limits of its constitutional power.* The suggestions of disaster to business have, we apprehend, their origin in the zeal of parties who are opposed to the policy underlying the act of Congress or are interested in the result of this particular case; *at any rate, the sugges-*

tions imply that the court may and ought to refuse the enforcement of the provisions of the act if, in its judgment, Congress was not wise in prescribing as a rule by which the conduct of interstate and international commerce is to be governed, that every combination, whatever its form, in restraint of such commerce and the monopolizing or attempting to monopolize such commerce, shall be illegal. *These, plainly, are questions as to the policy of legislation which belong to another department, and this court has no function to supervise such legislation from the standpoint of wisdom or policy.* * * *" Harlan, J., affirming decree, Northern Securities Co. v. United States, 193 U.S. 197, 351, 352, 24 S. Ct. 436, 462, 48 L. Ed. 679." (Emphasis added.)

United States v. South Eastern Underwriters Ass'n, (July, 1944), ... *U.S.* ....., *64 Sup. Ct. 1162, 1175-1176, 1178.*

In the statements on behalf of the Federal Power Commission, the sponsor of the Federal Power Act and the Natural Gas Act, we find the "expression of a clear and unequivocal desire" to discard and repudiate the principle of "fair value" and substitute therefor the so-called "actual legitimate prudent cost" rate base *(Sec. 208 (c),* originally numbered *211 (c)* of the Federal Power Act, *Appendix D, Pet. for Cert., p. 20-a). But* "we fail to find in the legislative history of the Act an expression of a clear and unequivocal desire of Congress to legislate" as urged by the Commission. "On the contrary, all the acceptable evidence points the other way." That Congress "desired," clearly and unequivocally, not to disturb the law as to rate base as *it then was* is manifest from the following: (1) The proposed prudent investment rate base was stricken in its entirety from the enacted statute; (2) the terms "prudent investment" or "prudent" were not used in any manner or at all by Congress; (3) Congress even refused to insert the word "prudent" in the Federal Water Power Act *(Appendix C, Pet. for Cert., pp. 9-a-10-a);* (4) in the Senate and House Joint Report re Natural Gas Act, recommending the passage of the Act (and it was passed as recommended), it was stated "that the Act provided 'for regulation along recognized and more or

less standardized lines' and that there was 'nothing novel in its provisions', H. Rep. 709, *supra*, p. 3. • • • Sec. 4(a) and Sec. 5(a) contain only the *conventional* standards of rate making for natural gas companies." (*Hope Natural Gas Company* opinion, 64 Sup. Ct. at page 294) and that Section 6 "Subsection (a) authorizes the Commission to investigate and *ascertain* the actual legitimate cost of property, depreciation and other necessary facts for rate making purposes"; (5) Section 6(a) was an adaptation of *Section 211(a)* as originally numbered and offered by the Commission. This subsection the Commission spokesmen (They represented they had authority to and did present the Commission views, *Appendix C, Pet. for Cert., pp. 8-a-9-a)* declared "Now this fits right into the picture of the separation of this property between state and interstate use" and "as being complementary to state regulation" and to "secure a body of information • • • most valuable in the administration of this Act and as an aid to the State Commission in their regulation of consumers" (*Appendix C, Pet. for Cert., p. 17-a, 19-a).* Such spokesmen gave no intimation that "subsection (a) of Section 211" had any relation whatever to rate base. Quite the contrary, it was "*211(c)*", and that subsection *only*, which in *1935* the Commission told Congress related to rate base (*Appendix C, Pet. for Cert., pp. 18-a-19-a);* (6) It required from 1935 and 1938 until 1941 for the Commission to discover and declare that Congress years before, *by indirection*, had established, and, therefore, had intended to establish by indirection, the "prudent investment" rate base which that body specifically and directly had refused to sanction; (7) *it was not until 1941* that this Court, despite the declared Congressional intent, as well as the Commission "discovery" in 1941, also discovered for the first time, and cryptically declared, that the principle of "fair value," the law of the land for fifty years, is now an impossible concept.

Prudent investment and fair value rate bases are entirely different things. The prudent investment theory is not that original cost is value, but that prudent investment is a more desirable rate base than value. However, the adoption and application of a prudent investment rate base

is not within the lawful function of either the Commission or this Court. In neither has been vested the function of *choosing* a rate base. Congress refused expressly and specifically to adopt the prudent investment rate base, and also refused to repudiate and discard the "fair value" rate base. Whatever may be the merits or demerits of the prudent investment theory, the principle is inherent in our system of government that Congress *having acted* in its legislative capacity as here, the Commission is required to determine what the present fair value of the petitioner's property really is. The Commission has no lawful authority to determine a rate base on some other theory which it prefers. Nor is this Court in a different situation than the Commission, for it too is bound equally by the constitutionally exercised authority of Congress, the legislative branch of the government. It is likewise immaterial that this Court may prefer a prudent investment rate base, for the controlling fact remains—Congress by its action has denied to this Court also the function of *choosing* a rate base. The duty of this Court then is not legislative, it is judicial,— that is, to review and restrain the Commission action within the limit and character of authority and the method of its exercise, which that agency may indulge *under law*.

The legislature is presumed to have known the occasion for legislation and to have known also its own legislative intentions. It also is to be assumed that that body embodied those intentions in the enacted law.

> "Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function."
>
> *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 510, 57 Sup. Ct. 868, 872-873.

The same principles equally are applicable to the consideration and application of the review provisions of *Section 19(b)* of the Act. By that section also, we are told, Congress was not changing the *then* law of the land respecting the judicial review of action by administrative agencies of the federal government. At the time of passage of both the Federal Power Act and the Natural Gas

Act, the *law* as repeatedly and consistently declared by this Court was settled and clear as to the scope of such review. *Section 19(b)* is equally clear: "The finding of the Commission *as to the facts*, if supported by substantial evidence, shall be conclusive." There is absolutely nothing therein about over-all "end result," "total effect," "entirety" or "consequences." That doctrine, as applied by this Court in the *Hope Natural Gas Company* opinion, we are now told was announced in the *Natural Gas Pipeline Company* case (1942), *supra*, and thereafter developed and applied in the *Hope Natural Gas Company* case (1944), *supra*.

In the latter case this Court declares: "And when the Commission's order is challenged in the courts, the question is whether that order 'viewed in its entirety' meets the requirements of the Act," citing the *Natural Gas Pipeline Company* opinion at *page 586 of 315 U.S.* The language in that decision obviously referred to is "If the Commission's order, *as applied to the facts before it* and viewed in its entirety, produces no arbitrary result, our inquiry is at an end." Neither is a formula, but both are statements of purported controlling legal principle. But much more important is the fact that the foregoing sentence from the *Natural Gas Pipeline Company* opinion is a part *only* of a single complete statement and idea stated in the paragraph of which the quoted sentence is the conclusion, both in form and substance.

The preceding language of the paragraph must be assumed to be something other than surplusage. If so, the entire paragraph, not the quoted sentence merely, tells us what this Court in 1942 stated the law to be. That language we quote:

> "The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances. Once a fair hearing has been given, proper findings made and other statutory requirements satisfied, the courts can-

not intervene in the absence of a clear showing that the limits of due process have been overstepped. * * *"

Federal Power Commission v. Natural Gas Pipeline Co., 315 U.S. 575, 586, 62 Sup. Ct., 736, 743.

Before the "end result" doctrine can come into play, four prerequisites must be met according to this 1942 declaration of this Court in the *Natural Gas Pipeline Company* opinion, *supra*, to-wit: (1) "a fair hearing," and all that is involved therein under law, (2) "proper findings made," (3) "statutory requirements satisfied," both by Commission and Court, and (4) "limits of due process" must not be "overstepped." These four prerequisites are not mere words; they relate to the substance of rights and *duties* under our constitutional system. And these fundamental rights and duties obviously were not discarded or repudiated by the last sentence of the paragraph, presently relied upon by this Court. Any such view casts doubt upon the good faith of this Court in 1942.

In 1935 and 1938, when the Federal Power Act and the Natural Gas Act, respectively, were enacted, neither Congress nor this Court, nor any other federal court, nor any person informed as to the law of the land, did or could envision that this Court in 1944, or at any other time, would abdicate the judicial duties imposed upon it by law, and at the same time embark upon a legislative program and policy, directly contrary to the clear and emphatic Congressional policy and action.

The "end result" doctrine, as applied in the *Hope Natural Gas Company* opinion, does not find any support whatever in the statutes under consideration or in *St. Joseph Stock Yards Co. v. United States* (1936), 298 U. S. 38, 56 Sup. Ct. 720, or any other decisions of this Court. It is variously declared by this Court that "unless there has been *error in the result* as well as error in the reasoning," the administrative order must stand *(Dayton Power & Light Co. v. Pub. Utilities Comm.*, 292 U. S. 290, 298, 54 Sup. Ct. 647, 652); "when the legislative method is disclosed, it may have a definite bearing upon the validity of the result reached" *(Chief Justice Stone* dissenting in *West v. Chesapeake & Pot. Tel. Co.*, 295 U. S. 662, 693, 55 Sup. Ct. 894,

907); and again in the same case "mere error in reasoning upon evidence introduced, does not invalidate an order." "Where the decision below is correct, it must be affirmed by the appellate court though the lower tribunal gave a wrong reason for its action" (*J. E. Riley Inv. Co. v. Comm'r Int. Rev.*, 311 U. S. 55, 59, 61 Sup. Ct. 95, 97). These and similar statements reflect the unquestioned law that, if the result *measured* by the issues of material fact in the record, and the law controlling the determination of such issues *is correct*, the court of review properly may not interfere with such regulatory result. With this principle of law we have no controversy.

In *Los Angeles Gas & Electric Corp. v. Railroad Commission*, 289 U. S. 287, 314, 53 Sup. Ct. 637, 647, this Court examined with particularity and in detail the *"result," based upon the specific evidence in the record and the controlling law*. In that case errors, assumed to have been made with respect to certain issues of fact, were considered and found to be neutralized by favorable allowances with respect to other elements of the rate base, *measured in the common denominator of dollars, that is, value*. This Court therein declared "* * * it is the function of the Court * * * to examine the result of the legislative action in order to determine whether its total effect *is to deny to the owner of the property a fair return for its use.*"

Similarly, in *Dayton Power and Light Co. v. Public Utilities Comm.*, 292 U. S. 290, 296, 54 Sup. Ct. 647, 651, this Court specifically appraised the end "result," *on the record and the issues of fact therein, as presented by the evidence*. "In determining the base on which a fair price is to be reckoned" as to "the value of the gas fields" of the Company in that case, this Court examined *in detail* the evidence upon and the determination by the Commission of that issue and the disposition made of it by the Supreme Court of Ohio. This Court then concluded *on the record evidence relating to that specific question* that "the property interests of the appellant" had not been confiscated. The fact, that "what was said and what was done" by the Commission were different, was immaterial, because "what was done," *based on the record*, did not result in confiscation of the gas fields of the utility there involved.

Under the law, "result" is measured and circumscribed by the requirements that there be "substantial evidence" upon the specific issues involved, and that controlling law applicable to the particular case, both sustain and justify "the conclusions reached." This principle does not permit the taking or appropriation of *any portion* of the utility's property. The truly novel doctrine of *Hope Natural Gas Company* case, as a practical matter, permits the appropriation with impunity of any amount of the property of the utility up to the point that such taking interferes with the ability of the utility to continue to do business and render service. These two concepts are widely variant and in fact irreconcilable.

Thus, neither of the decisions of this Court referred to *supra*, directly or by implication, is authority for the proposition: that a result *contrary* to correct reasoning can stand; or that a result predicated upon grounds upon which the Commission action cannot be sustained, can stand; or that a result, unsupported by substantial evidence as to issues of material fact, can stand; or that a result in disregard of or contrary to the terms of the statutory charter of regulatory authority, can stand; or that a result however wrong, under which the utility can manage to survive and continue to render service, can stand.

Both before the enactment of the Federal Power Act in 1935, after the enactment of the Natural Gas Act in 1938, and in each of the intervening years this Court consistently acted upon and in recognition of the principle of "fair value" as the controlling law. This settled state of the law necessarily is reflected in the Congressional declaration that that body *intended* nothing new or novel. In both acts in question Congress delegated to the Federal Power Commission rate-regulatory authority, which that agency did not before have, *but* Congress made it entirely clear that the authority so delegated was to be exercised in accordance with the *then* standards of law applicable to public utility rate regulation. These are described by Congress and by this Court as the "recognized," "standardized" and "conventional" standards of rate making.

See:

Los Angeles Gas & Elec. Corp. v. Railroad Comm. (1933), 289 U. S. 287, 305, 53 Sup. Ct. 637, 644;

Lindheimer v. Illinois Bell Tel. Co. **(1934)**, 292 U. S. 151, 164, 54 Sup. Ct. 658, 663;

Dayton Power & Light Co. v. Public Utilities Comm. **(1934)**, 292 U. S. 290, 296, 54 Sup. Ct. 647, 651;

Clark's Ferry Bridge Co. v. Pub. Service Comm., **(1934)**, 291 U. S. 227, 235, 54 Sup. Ct. 427, 429;

West v. Chesapeake & Pot. Tel. Co. **(1935)**, 295 U. S. 662, 671, 55 Sup. Ct. 894, 897;

St. Joseph Stock Yards Co. v. United States **(1936)**, 298 U. S. 38, 53, 54, 56 Sup. Ct. 722, 726, 727;

Ohio Bell Tel. Co. v. Public Utilities Comm. **(1937)**, 301 U. S. 292, 305, 57 Sup. Ct. 724, 730-31;

Railroad Comm. v. Pacific Gas & Elec. Co. **(1938)**, 302 U. S. 388, 394, 58 Sup. Ct. 334, 338;

Driscoll v. Edison Light and Power Co. **(1939)**, 307 U. S. 104, 114, 59 Sup. Ct. 715, 720.

In *Driscoll v. Edison Light and Power Company, supra*, for instance, this Court clearly and specifically adhered to the principle that even in the fixation of temporary rates under a state statute, the Commission may not disregard present cost, omit indirect and overhead items of construction and exclude allowances for working capital and going concern value. The Pennsylvania Commission having in fact interpreted the act and applied it in conformity with the fundamental requirement "that it must weigh all the essential elements of valuation required by our past decisions," this Court held that it was not necessary to inquire into the constitutionality of the enactment in question. Turning then as a court of review to the question of confiscation, this Court examined and considered with particularity the findings of the Commisison with respect to *each* issue of material fact as to which the claim of confiscation was alleged. The entire procedure of this Court in that case was in conformity with the then established and long settled law. In 1939, this Court did not suggest or imply that *even* in a confiscation case in a court of equity the test of present confiscation was or could be "past profits" and the conclusion that, despite the order objected to, the utility could survive and continue to render service in the future. Nor did this Court in that case give the slightest indication that the "findings of fact by * * * an administrative agency" need not be "supported by substantial evidence" and the other fundamental require-

ments discussed by *Mr. Justice Brandeis* in the *St. Joseph Stock Yards Company* case, *supra*. The concept of "end result," "impact" and "consequences," presently the view of this Court, was not then "novel;" it had never been heard of at that time; and certainly cannot be read into the provisions of the Natural Gas Act specifically granting judicial review of the Commission findings and order on the record. The doctrine of *Hope Natural Gas Company* case, *supra*, stands alone and in opposition to *all* law of the land. It is "novel," and much more!

ALLOCATION.

The whole question of allocation is disposed of summarily by counsel *(Comm. Br. pp. 8-9)* in the following manner: (1) The Commission is not required to make "an allocation of property." "The Natural Gas Act does not prescribe any method of allocation, nor even require that any formal allocation be made"; (2) "All that can be accomplished by an allocation of physical *property* can be attained by allocating costs *including the return*"; (3) "Contrary to petitioner's contentions (Pet. 4) the Commission's use of *the peak day on the system* as the basis of allocating the capacity costs was appropriate in the circumstances (R. I, 79; R. II, 761). Moreover, the Commission used '*the coincident demands' of all customers on that day* (R. I, 82) and thus *recognized the service priority* of domestic consumers"; and (4) "As the record shows, this resulted in an *increased allocation of costs to the interstate sales* which are subject to the Act, and a proportionately lower rate reduction in such sales (R. II, 735)." (Emphasis added.)

The first and second of the foregoing arguments ignore the law, while the third and fourth are contrary to the record facts in this case. To each thereof, brief answer will be made in the order of their statement by counsel.

(1) The necessity for an "allocation of property" in the proportion in which it is used for and in which it is not used for the business subject to lawfully exercised rate-regulatory control, cannot be disposed of simply by assertions of counsel in the face of and contrary to existing and controlling law of the land. The law in that behalf is clear and uniform as are all decisions of this Court and other

federal courts on that subject. (See *Opening Br. of Pet. herein, pp. 54-58).* True, the Natural Gas Act does not mention "allocation." Nor did the Commission draft of the Federal Power Act, yet the authorized *(Appendix C, Open. Br. Pet., pp. 7a-9a)* spokesmen who presented the Commission draft and views declared to Congress: "In this separation, we know of no way of dividing it other than that specified by the Supreme Court of the United States in the Minnesota rate case. Where you can ascertain the cost of the property, you can readily determine what percentage of the property is used in interstate commerce and what percentage is used in intrastate commerce * * *" *(Appendix C, Open. Br. Pet., p. 17a).* The necessity for such allocation arises not from the terms or provisions of any statute but from the basic fact that "it is essential" under our constitutional system of government when the rate-regulatory jurisdiction exercised does not embrace all the operations or the facilities in their entirety of the regulated business *(Smith v. Illinois Bell Tel. Co.*, 282 U. S. 133, 148-149; 51 Sup. Ct. 65, 68-69). In this case, the Commission statutory rate-regulatory authority does not extend to intrastate operations or to direct sales to ultimate consumers. Domestic consumers have priority over others. And, of course, as this Court has many times declared, it is not the function of either Commission or Court "to provide a more comprehensive scheme of regulation than Congress has decided upon." Neither the Interstate Commerce Act nor other federal or state rate-regulatory acts mention "allocation." (See: *Simpson v. Shepard*, 230 U. S. 352, 33 Sup. Ct. 729, 753; *Smith v. Illinois Bell Tel. Co.*, 282 U. S. 133, 51 Sup. Ct. 65; *Columbus Gas & Fuel Co. v. Public Utilities Comm.*, 292 U. S. 398, 54 Sup. Ct. 763). Counsel's contention evades but does not meet the requirements of law respecting allocation.

(2) Counsel for the Commission quote the Commission,—sort of a boot-tugging operation—to the effect that the Commission so-called "allocation of costs" accomplishes all that could be attained by "allocation of physical properties." This wholly unsupported assertion, *which neither Commission nor counsel undertake to demonstrate*, is offered in justification of the deliberate and admitted non-compliance with the law requiring "allocation of property." This controlling principle has not been repealed or overruled.

"* * * if the action is based upon a determination of law as to which the reviewing authority of the courts does come into play, an order may not stand if the agency has misconceived the law.

* * * * *

"* * * an administrative order can not be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which its action can be sustained."

Securities and Exchange Comm. v. Chenery Corp., (1943) 317 U. S. 80, 63 Sup. Ct. 454, 462.

The Commission "allocation of costs," as quoted by counsel, is predicated upon "allocating costs *including the return*." (Emphasis added.) This is directly contrary to the principle first laid down by this Court in *Simpson v. Shepard*, 230 U. S. 352, 33 Sup. Ct. 729, 765, and followed consistently in numerous later cases, cited *infra*, all of which decisions Commission and counsel blithely ignore.

(3) Counsel's reference to "the peak day on the system," if not a direct statement, is a direct implication that the "system" meant is the system of this petitioner, Colorado-Wyoming Gas Company. This reference is directly linked to the next sentence, where it is said "The Commission used 'the coincident demands' of all customers on that day," *for the so-called "co-incident demands" relate to "customers" of this petitoner only (R. V. 3, Comm. Ex. 227, Table 2, Cols. 7, 8, 9)*. The "peak day" used by the Commission was not the peak day deliveries of gas to or of this petitioner on February 9, 1939, or at any other time. It was the "peak day delivery" of the Colorado Interstate Gas Company on February 9, 1939 *(R. V. 1, pp. 142, 186-187, 358; R. V. 2, pp. 728-729, 735-736, 738, 751, 760-763)*. Nor were the so-called "coincident demands of all customers" used by the Commission *(R. V. 3, Comm. Ex. 227, Table 2, Cols. 7, 8, 9)* the *actual* coincident demands of the customers of petitioner on the Colorado Interstate Gas Company "peak day delivery" *(R. V. 1, pp. 186, 358)*. The next statement of counsel by way of conclusion that the illegal Commission method

"thus recognized the service priority of the domestic customers" is directly contrary to the testimony of the sole Commission witness on allocation.

> "Q. Mr. Lyon, did you give consideration or effect in your study to the fact that at the present time the entire capacity of the Colorado-Wyoming system is required to satisfy peak day demands of domestic consumers?
>
> "A. No effect."
>
> *(R. V. 2, p. 786)*
>
> (See also *R. V. 2, pp. 730-731*)

(4) Counsel finally assert that the illegal Commission method "resulted in an increased allocation of costs to the interstate sales" which benefited petitioner. The implicit statement is that such alleged benefit is apparent from a comparison between the Commission method and an "allocation of property" as required by law. The assertion of counsel is contrary to fact. The record reference cited *(R. V. 2, p. 735)* has nothing whatever to do with an allocation of property, or a comparison of such an allocation with the Commission method of "allocation of costs." The comparison, at the page cited, relates to two different "allocations of cost" by the Commission staff, neither of which involved "allocation of property" in any degree or at all.

Such then is the unreliable fabric of the contentions now made in support of the Commission "allocation of costs," which is both erroneous in law and contrary to the record facts. Nevertheless, Commission and its counsel thus defend it as "a working one suitably adapted to the particular circumstances," that is, a substitute not permitted by law, but asserted to be just as good as the real thing.

THE SUBSTANCE OF "DUE PROCESS."

Counsel *(Comm. Br. pp. 2, 10-11)* undertake to dispose of this fundamental question by parading the assumed earnings of petitioner from 1925 to 1939 as barring this petitioner from any rights of present or future protection from lawless and arbitrary action of the Commission in 1942. The argument indulged is that "the financial history" of past earnings determines whether future earnings hereafter to

be *permitted* by the Commission reduction order will be "fair and reasonable," or, conversely stated, confiscatory. The use of the term "confiscation," counsel obviously avoid, and no doubt advisedly. *For this is retroactive law with a vengeance.* This demagogic contention is not supported or permitted by the record facts, or by the established law of the land, and particularly by "the rudiments of fair play."

The contention rests upon the assumption that this is a "confiscation" case, so-called, and not a *statutory* review specifically predicated on the record and the findings as to the facts disclosed by that record *(Open. Br. Pet. pp. 24-37)*. It is further assumed that the "confiscation" against which petitioner is entitled to protection is not that confiscation declared and applied heretofore by this Court (See, *Los Angeles Gas & Electric Corp. v. Railroad Comm.*, 289 U.S. 287, 53 Sup. Ct. 637; *St. Joseph Stock Yards Co. v. United States*, 298 U. S. 38, 56 Sup. Ct. 720), but a newly devised and restricted concept of "confiscation" measured only by sounding phrases, presumably announced in *Federal Power Comm. v. Hope Natural Gas Company*, 320 U. S. 575, 64 Sup. Ct. 281. The assumption also must be indulged that, while the Commission admittedly has no jurisdiction whatever over past profits prior to the enactment of the Natural Gas Act or prior to any order of rate reduction, yet such alleged past profits nevertheless can be ~~restored~~ resorted to *and given effect* in order to justify and validate a Commission order which obviously cannot be defended otherwise, or it would be so defended. Involved also is the repudiation and over-ruling of the established principle that "profits of the past cannot be used to sustain confiscatory rates for the future" *(Board Public Utility Commrs. v. N. Y. Telephone Co.*, 271 U. S. 23, 32, 46 Sup. Ct. 363, 366; *Los Angeles Gas & Elec. Corp. v. Railroad Comm.*, 289 U. S. 287, 313, 53 Sup. Ct. 637, 647, and cases cited). The foregoing assumptions are necessary corollaries to the so-called "end result" or "impact" theory now apparently in vogue. That this theory represents a new and novel ideology in American government is demonstrated by the cold fact that it cannot prevail in harmony with the century-old and uniform stream of judicial pronouncements of this Court. Such is the "impact" of this new theory of governmental powers, functions and duties.

Now as to the asserted facts which counsel relate: We are told that in 1931 there was a "stock dividend" of 45,000 shares (par value $100.00) of stock of "the recorded value" of $1,500,000. What happened was this: 10 shares were issued December 1, 1925, upon payment of $1,000 in cash; 4990 shares were issued December 18, 1925, upon payment of $76,800 in cash. Thereafter, on December 21, 1931, there were issued 45,000 shares. For this stock Public Service Company of Colorado *paid $1,500,000 in cash.* This $1,500,000 covered repayment to Henry L. Doherty & Co. of $1,139,075.67, the then balance of *construction funds* theretofore *admittedly* advanced by said Henry L. Doherty & Co. to this petitioner, and $360,924.33, the "earned surplus which the Company had earned prior to December, 1931." The Commission witness *Smith* described this stock issuance as a "stock dividend" and to do this he refers to the balance of construction funds advanced, $1,139,075.67, as a "donated surplus"—*(R. V. 2, pp. 549-551; R. V. 3, Comm. Ex. 202, St. B-6, Ex. 137)*, although in the stock purchase by Public Service Company that company paid to Henry L. Doherty & Co. the sum of $1,139,075.67. The stock issued *to liquidate* the advance of construction funds in the amount of $1,139,075.67, however designated, was in fact the purchase of stock for that amount of actual money expended in capital construction, *and then an outstanding and unpaid indebtedness of this petitioner.* "Accuracy has its claims" even in a proceeding such as this has developed to be.

Next counsel state "*In addition* to the stock dividend, petitioner paid cash dividends which by the end of the test year, 1939, totaled $1,445,000 (R. 111, Ex. 202, p. 8)." This statement of counsel is contrary to the facts. The *total* dividends paid or disbursed by this petitioner were $1,445,000. No dividends whatever were paid by this petitioner prior to 1931. Whatever part, if any, of the $360,924.34 earned surplus as of December, 1931, was disbursed at any time as a dividend, was declared and paid thereafter and as a part of the $1,445,000. Moreover, the sum of $1,139,075.67, *covering payment of the balance of the capital indebtedness incurred up to 1931*, was not a stock dividend or a dividend at all. It was a payment of debt *(R. V. 3, Comm. Ex. 202, St. B-5)*. It is also true, and upon this, too, counsel are silent, that the dividends paid by this petitioner included profits derived from

admittedly non-jurisdictional operations over which, *by law*, the Commission has no rate-regulatory jurisdiction. Such dividends included also profits from *local* Colorado "sales for resale," which if local, as this petitioner contends, also are beyond the rate-regulatory jurisdiction of the Commission. How then, under any ideas of fairness and reason, and even under the "end result" theory that past profits can be used against a utility, can such total dividends, derived from both jurisdictional and non-jurisdictional operations *in the past*, be urged or considered in determining whether the order of rate reduction applicable only to *future* jurisdictional operations is "fair and reasonable" and not arbitrary and lawless?

Having sought to apply the first premise of the "end result" theory with respect to "past profits," counsel then contend "The Commission's order *permits* petitioner to earn not less than $132,553 per year from its *utility operations*." By the use of the word "permits," coupled with the words "utility operations," obviously it is expected the conclusion will be indulged by this Court that such earnings accrue only from operations subject to the rate-regulatory control of the Commission. However, such is not the fact. The earnings which the Commission "permits" petitioner to earn on such operations, which *alone* the Commission is *permitted* by the Natural Gas Act to control, are not $132,553 but $88,790 *(Op. Comm., R. V. 1, pp. 78, 95)*. *The balance of earnings* result from "industrial and other direct sales" over which *by law* the Commission has no rate-regulatory control. It is entirely clear though that *in fact*, as disclosed by the foregoing statement as well as the record, the Commission did control and limit *all* earnings of the petitioner, both jurisdictional and non-jurisdictional, and then by its so-called "allocation of costs" assigned a portion thereof to the non-jurisdictional business. This is apparent from the Commission order *(Op. Comm. R. V. 1, pp. 78, 83, 95-96)*. The Commission "allocation of costs" was intended to and does accomplish just this. To the $132,553 earnings, *which are not what they purport to be*, counsel adds interest on a $98,000 loan (not part of the rate base) of $5,900, and then concludes "The income available for dividends on petitioner's *common stock* * * * is the equivalent to a return of 9.08% on the petitioner's combined capital stock and surplus * * * *." Of

course, no rate base whatever was ascertained for that portion of petitioner's property and plant devoted to "sales for resale" (wholly aside from the issue as to the Commission rate-regulatory authority over local Colorado "sales for resale"). The only "rate base" announced by the Commission (and that one is erroneous) is *all* inclusive, embracing all property and plant of petitioner without distinction between jurisdictional and non-jurisdictional uses and operations *(Op. Comm. R. V. 1, p. 78)*. So, in attempting to apply the second premise of the "end result" theory, to-wit: that if the utility can survive and continue to do business, there can be no complaint of "confiscation," likewise on the authority of the *Hope Natural Gas Company* case, *supra,* counsel find it preferable to urge their contention not in terms of rate base but in terms of capital structure. This contention also involves the necessary assumption that earnings over 6½% on the direct industrial business (for under the Commission theory and order the "sales for resale" business, we are told, is limited somehow, without the measure of an applicable rate base, to 6½%) property may be used to defeat any attempt to review as lawless and arbitrary the future earnings *permitted* by the Commission's order to be made from the regulated business.

What kind of due process, either formal or substantive, is this? There is precisely nothing in the Natural Gas Act which could possibly be construed to contemplate such an "end result." Nor does the history of the legislation afford the slightest basis for such "consequences." By what lawful authority then does the Commission and this Court assume the prerogative thus to order and affirm?

Under our plan of government a citizen cannot be "pragmatically adjusted" or "end-resulted" out of his essential rights of property. To suggest that these considerations are all within the range of a pure discretion and to be evaluated or not at the sole will of the Commission is to lose sight of all the tests of expropriation we have hitherto known.

CONCLUSION.

The "impact" upon the law of the land, of the current course of Commission action and of the doctrines of the *Hope Natural Gas Company* decision, *supra*, including the "consequences" of those doctrines, require, in fairness to the common weal, careful consideration and adequate discussion by this Court of the fundamental questions and principles involved. This to the end that such issues may be settled on their merits and that all citizens be advised of the substantial reasons controlling such determination.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1944.

No. 575

COLORADO-WYOMING GAS COMPANY, a corporation,
PETITIONER,

vs.

FEDERAL POWER COMMISSION; COLORADO INTERSTATE GAS COMPANY, a corporation; CITY & COUNTY OF DENVER, COLORADO; PUBLIC SERVICE COMMISSION OF WYOMING; PUBLIC SERVICE COMPANY OF COLORADO, a corporation; and CANADIAN RIVER GAS COMPANY, a corporation, RESPONDENTS.

BRIEF AND ARGUMENT OF PETITIONER.

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JANUARY, 1945.

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BRIEF AND ARGUMENT OF PETITIONER.

Colorado-Wyoming Gas Company, petitioner herein (referred to as "Colorado-Wyoming Company" or "petitioner"), on October 10, 1944, filed herein its petition praying that this Court issue its writ of certiorari to review the final judgment of the United States Circuit Court of Appeals for the Tenth Circuit (referred to as "Court of Appeals") *(R. V. 2, p. 1120)*, affirming a final order of the Federal Power Commission (referred to as "Commission") under the "Natural Gas Act" of 1938, which order found that "the rates and charges made, demanded and received by Wyoming Company for and in connection with the transmission and sale of natural gas for resale in interstate commerce * * * are unjust, unreasonable and excessive to

the extent of $119,000 per year,'' and directed reduction thereof accordingly *(R. V. 1, pp. 94-96)*.

Thereafter, this Court, on November 13, 1944, granted certiorari as follows:

> ''The petition for writ of certiorari is granted limited to the seventh question presented by the petition for the writ.''

OPINIONS BELOW.

The opinion of the Court of Appeals *(R. V. 2, pp. 1092-1120)*, in case entitled *Colorado-Wyoming Gas Co. v. Federal Power Commission, et al.*, is reported in 142 F. (2d) 943. The opinion and order of the Commission *(R. V. 1, pp. 45-85, 94-97)* is reported in 43 P.U.R. (n.s.) 205.

JURISDICTION.

The judgment of the Court of Appeals was entered July 8, 1944 *(R. V. 2, p. 1120)*; Petition for rehearing herein, filed on July 26, 1944 *(R. V. 2, p. 1123)*, was overruled August 9, 1944 *(R. V. 2, p. 1161)*. The jurisdiction of this Court is invoked under *Section 347(a) (Section 240, amended)* of the Judicial Code *(U.S.C.A., Title 28, Sec. 347(a))*, and *Section 19(b)* of the Natural Gas Act *(52 Stat. 821; 4 U.S.C.A., Title 15, Sec. 717r(b))*.

STATUTE INVOLVED.

The statute involved is the Natural Gas Act *(52 Stat. 821; U.S.C.A., Title 4, Sec. 717)*, the pertinent provisions of which are set forth in *Appendix A*, this brief.

QUESTIONS PRESENTED.

The ''seventh question'' specified by this Court as the scope of this review is as follows:

> ''7. The opinion and order of the Commission approved by the Court of Appeals, under the subject title of 'Allocation of Cost of Service,' is predicated upon the following assumptions and conclusions, to-wit:
>
> (1) It is assumed that the property of this petitioner and the properties of Colorado Interstate Gas Company and Canadian River Gas Company, admit-

tedly separate and independent for all other purposes in all respects, including rate making, nevertheless properly may be 'integrated' as a single system for purposes of allocation required in this case *(R. V. 1, p. 79)*.

(2) The Commission 'Allocation of Costs,' approved by the Court of Appeals, is not based in whole or in part upon the peak-day deliveries or other operations of this petitioner, but is predicated upon the peak-day deliveries and operations of Colorado Interstate Gas Company *(R. V. 3, Ex. 226, Table 2, Line 28, Cols. 7, 8, 9; R. V. 1, pp. 186, 358; R. V. 2, pp. 728-732, 561-562)*.

(3) The inaccuracy manifest in the record as to the asserted factual basis adopted by the Commission for its conclusions of 'allocation of cost of service' is ignored by both the Commission and the Court of Appeals. Such alleged basic facts are grossly inaccurate, and admittedly merely averages, estimates and guesses *(R. V. 2, pp. 728-732, 735-744, 746-748, 751-754, 756-758, 762, 764-765)*.

(4) The Commission 'Allocation of Cost of Service,' approved by the Court of Appeals, *admittedly does not involve and is not predicated upon any allocation of property whatever* as between property and operations subject to the rate-regulatory authority of the Commission in this case and property and operations not subject to that authority in this case, nor does it give consideration to the *actual* operating conditions of petitioner's system including priority of domestic service over industrial service of gas *(R. V. 1, p. 80; R. V. 2, pp. 561-562, 730-731, 786-789)*.

(5) It is assumed by the Commission 'All that can be accomplished by an allocation of physical properties can be attained by allocating costs including the return'. *(R. V. 1, p. 80)* and adopted by the Court of Appeals in the following language: 'The Commission further stated that it did not follow from that obligation (i.e., "allocation of the property used in regulated business from that used in unregulated business") that an allocation of physical property or portions thereof

must be made before any excessive returns were determined. * * * The separation or allocation may be effected by application of any formula which makes the principle a working one suitably adapted to the particular circumstances' *(R. V. 2, pp. 1112-1113)*.

The question presented then is: Whether the allocation of cost of service, so-called, adopted in this case is without support in the record and contrary to law."
(Petition for Certiorari, pp. 4-5.)

THE OPINION AND ORDER OF THE COMMISSION AS IT RELATES TO "ALLOCATION OF COSTS."

The Commission in the three separate proceedings against Canadian River Gas Company (No. 380, this Court), Colorado Interstate Gas Company (No. 379, this Court), and Colorado-Wyoming Gas Company, which were consolidated "for purposes of hearing thereon" *(R. V. 1, pp. 41-44)* conducted as "to each of the Companies as separate operating entities * * * three separate and distinct rate cases" *(R. V. 1, p. 79)*. Thereafter, and for purposes of "allocation," the Commission concluded that all the "separate" and independent properties and operations of Canadian Company, Colorado Interstate Company and Colorado-Wyoming Company are one "entire project," declaring in that behalf: "* * * although involving facilities of three corporate entities is, for all practical purposes, a single project now designed to produce, gather, transmit and sell natural gas from the Texas-Panhandle field to consumers along the line as far north as Cheyenne, Wyoming" *(R. V. 1, p. 79)*. In effect, according to the Commission, Colorado-Wyoming Company is engaged in the production of natural gas in Texas, and Canadian Company is engaged in the sale of natural gas in Wyoming.

There is no evidence in the record and there are no findings of fact or conclusions of law permitting this bold and arbitrary merger of these wholly "separate," "distinct" and entirely independent enterprises. By way of attempted justification, the argumentative assertion is indulged and relied upon that "The operation of the project is such that it is impossible, for example, to alter the rates of Canadian

Company without simultaneously affecting the reasonableness of the rates of Colorado Company. Likewise, the rates of Colorado Company cannot be altered without affecting the rates of the Wyoming Company" *(R. V. 1, p. 79)*. This contention simply obliterates all jurisdictional and legal barriers whenever the Commission finds it "necessary" or "convenient" so to do.

The Commission opinion proceeds:

> "The Commission is aware that in an investigation such as this it is incumbent on it to determine the reasonableness or unreasonableness of the rates and charges subject to its jurisdiction. This requires that the total costs of operations, including depreciation, taxes and a fair return, be distributed among the various customers served, individually or by appropriate groups. To the extent that such costs allocated to sales under the Commissioner's jurisdiction are less than revenues received, the rates and charges made are unjust and unreasonable, and revenues must be reduced accordingly.
>
> "It does not follow, from this obligation of the Commission, that an allocation of physical property or portions thereon, must be made, before any excessive returns are determined, as seems to be the contention of the companies. • • •
>
> "All that can be accomplished by an allocation of physical properties can be attained by allocating costs including the return. The latter method is by far the most practical and business-like."
>
> *(R. V. 1, pp. 79-80.)*

Thus, without consideration or discussion of the *then* established, settled and controlling law declaring the principles and requisite manner and method of allocation, and determination of the value of the property employed in the jurisdictional or regulated sale for resale business and as to the revenues and expenses incident to that business, the Commission simply discards the principle of "allocation of physical properties" in its entirety.

Having disposed of all legal restraint upon it, the Commission next enumerates the variable and adjustable so-

called "principles" of its alleged "cost allocation." These, it is said, were applied to "Canadian and Colorado Companies" and that "modification" applied to Colorado-Wyoming Company.

"Commission staff exhibits on cost allocation followed principles that have long been recognized as reasonable in the public utility field and are widely accepted. Therein costs are divided essentially into two groups, fixed and variable. Fixed costs are largely joint costs which do not vary with volume of sales. The total amount of such costs are largely proportional to the maximum demand on the system or system capacity. Accordingly, these costs have been allocated basically in proportion to each customer's responsibility for the peak day demand. Variable costs are largely those that vary proportional to output or volume of sale. Accordingly, these costs have been allocated in proportion to volume of gas purchased by each customer.

"The principles and methods of cost allocation presented by Commission staff are obviously the most appropriate and reasonable for Canadian and Colorado Companies.

• • • • •

"In preparing its allocation of costs for Wyoming Company, Commission staff departed from the use of the system peak day for allocating demand (fixed) costs and combined the separate class peaks of resale customers and of main line industrial customers. This method is commonly used, but under the particular circumstances surrounding the deliveries of gas to the industrial customers involved, a variation from that method as hereinafter set forth would be in keeping with the Company's operations. The Colorado Portland Cement Company, the principal main line industrial user, is curtailed regularly during system peak days. Its demand on the system peak day is, in our opinion, a proper measure of its proportionate share of demand costs than its highest off-peak demand. Accordingly, the principles and methods of cost allocation presented by Commission staff are adopted with the modification that the coincident de-

hands of all customers on the system peak day are used, and with exception of deliveries to Highway Gas Company."

(R. V. 1, pp. 80-81, 82-83.)

The structure of the Commission "cost allocation," it is declared, is based "largely" and "basically," and in general upon the division of "costs" between "fixed" and "variable" costs. This, of course, means that the division and classification of "costs" as between "fixed" and "variable" is open ended and at large, that is, purely an uncontrolled choice, "discretion" or "judgment" of the Commission.

The *Commission* evidence *(Comm. Ex. 227, Table 2, R. V. 3)*, considered *infra*, discloses affirmatively that *in fact* neither the Commission staff nor the Commission itself followed or applied the so-called "principles and methods" and "the modification" thereof as quoted from the foregoing recitals of the Commission order.

As we also point out, *infra*, the Commission "allocation of costs" procedure, as applied to this Company, is neither methodical nor formulary. It is a mere device or arrangement of alleged "costs," wholly devoid of any controlling principle. "Facts" are assumed without evidentiary support and in numerous instances contrary to the record evidence.

It is to be observed that the Commission treatment of "allocation of costs" is entirely barren of findings of fact. There are no disclosures as to the methods and results of the application of the Commission "method" which it is asserted, without support, "is commonly used." No statement or finding is made as to what "the particular circumstances" were, or why they rendered it necessary to develop the "variation" or "modification" of the "commonly used" principle or method, which the Commission "adopted" and applied to this Company. The Commission freely indulged conclusions but did not undertake any explanation whatever of its procedure or the application made thereof *(R. V. 1, pp. 83-83)*. It cannot be determined on this record "other than by sheer acceptance of the Commission conclusion, in the form of its statement of the result and the cryptic formula-

tion" thereof, what, if any, are its basic factual and legal foundations.

THE OPINION OF THE COURT OF APPEALS.

Upon the issue of "allocation," the Court of Appeals simply adopted the devices and conclusions of the Commission, without any examination or consideration of the principles of law controlling or of the requisite foundation facts.

(1) The Court of Appeals apparently overlooked or misconceived the distinction in fact and law between "allocation of property" and "allocation of costs" also described as "allocation of cost of service," for the opinion states: "The separation may be appropriately effected by estimating or appraising the value of *the property used in the regulated business and that used in the unregulated business. Smith v. Illinois Bell Telephone Company*, 282 U.S. 133" (Emphasis added.) Then it is said by the Court, "The separation or allocation may be effected by application of *any formula* which makes *the principle* a working one suitably adapted to the particular circumstances," citing *Columbus Gas & Fuel Co. v. Public Utilities Commission*, 292 U.S. 398. (Emphasis added.) If by "any formula" the Court means the Commission lawfully may promulgate, and the Court is at liberty to approve, a formula which discards, "allocation of property" and substitutes therefor "allocation of cost of service," then that Court is not supported by the *Columbus Gas & Fuel Co.* case cited by it, or by the other controlling decisions, none of which have been overruled. These are considered *infra*.

(2) As to the application of the Commission "method" in the light of the record evidence in this case, that Court declared:

> "But, assuming that the requisite separation may be accomplished by an allocation of cost of service, the method used by the Commission is said to be erroneous. It is *argued* among other things that it *assumes* that all of the property is used in common in the conduct of all business *whereas a large portion is used exclusively in the regulated portion, another part is used exclusively in the unregulated portion, and only a part is used in common*

in both businesses; that in respect to the property which is used in common for both businesses, it fails to give consideration to the priority or preferential use of such property in supplying gas for domestic consumption as against unregulated business, and ignores actual peak demands and load factors; *that it operates to minimize all costs, produces apparent cost much less than actual cost, and shifts cost from regulated to unregulated business; and that it is unsound in fact and law.* It may be conceded, without deciding, that the *method* is not *free from defects* or imperfections in *all* its aspects." (Emphasis added.)

Having disposed of "the principle" of law requiring "allocation" of "the property" as between "the regulated business" and "the unregulated business," by approval of the purported "formula" adopted by the Commission as "appropriate and reasonable," and having conceded in effect that the Commission procedure "is unsound in fact," the Court of Appeals, nevertheless, foreclosed the whole matter of "allocation" as follows:

"But even so it cannot be said that as a consequence, the impact of the orders of reduction, each in its totality, produces arbitrary results or oversteps the bounds of due process. Therefore the orders are not open to further judicial inquiry on these grounds. *Federal Power Commission v. Natural Gas Pipeline Co., supra; Federal Power Commission v. Hope Natural Gas Co., supra.*" (Emphasis added.)

(R. V. 2, p. 1114.)

Colorado Interstate Gas Co., et al. v. Federal Power Commission, 142 F. (2d) 943, 958-959.

Such a record of summary judicial action poses at once the question: What is the measure and duty of review actually delegated to and imposed as a matter of law upon the Court of Appeals by *Section 19(b)* of the Natural Gas Act?

Obviously, the scope of the authority and *duty* of judicial review under the Natural Gas Act is governed and controlled by the terms and provisions of that Act. The determination of that scope admittedly is a legislative function, and Con-

gress, in which body "all legislative powers" of the federal government "are vested," *has acted.* Neither the Commission nor the courts have any authority to question or overrule that legislative policy and action, nor are the Commission and the courts concerned, within the authorized spheres of their respective powers, as to whether Congress was required to accord the right of review which it in fact granted. The only inquiry is: What was that Congressional action?

Section 19 (b) of the Act grants two separate and distinct rights of judicial review, to-wit: (1) the statutory "review of such order in the Circuit Court of Appeals" as specifically detailed in *Section 19 (b)* (except the last sentence thereof); and (2) the limited review by certiorari of "the judgment and decree of the court" in the Supreme Court of the United States (last sentence of *Section 19 (b)*).

The review in the Court of Appeals *is a matter of right* and is the primary and more extensive review; while the review by certiorari in the Supreme Court *is not a matter of right*, but is the established, restricted and very limited review accorded by this Court under that writ.

The scope and duty of review in that Court, the Congress defined and fixed with particularity in the Act itself.

The scope and duty of review by this Court on certiorari of "the proceedings in the court to which the writ is asked to be directed," Congress left as it found it, that is, as theretofore fully settled and declared by this Court in its rules and decisions, as follows: "A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor" *(Rule 38 (5)).*

Analysis of *Section 19 (b)* of the Act *(Appendix A,* this brief) demonstrates that the scope and duty of review by that Court *of the Commission order* and by this Court *of the decision of that Court* are not identical, but are widely different and variant, as Congress declared in unambiguous language.

The measure of review directed to that Court and to this Court being different, the reviewing action of each court must be in conformity with the Congressional mandate di-

rected to it. As to the scope and duty of review imposed on the Court of Appeals by the Act and the settled law at the time of the passage of that Act, see *Appendix D*, this brief.

It is entirely clear that the specific function and duty directly imposed by the Act upon the Court of Appeals, as the court of primary review, is to determine whether the findings, conclusions and order of the Commission conform to the controlling legal and statutory requirement. Recently this Court has enumerated those requirements as: action within the ambit of the statutory authority of the Commission; "a fair hearing," which has a settled and well understood meaning under our system of government; "proper findings," that is, in conformity with and predicated upon the record evidence; adherence to "other statutory requirements;" and application of the principles of "due process," which relate to matters of substance as well as to mere form. Thereafter, and only if and when the foregoing fundamental and basic conditions precedent have been satisfied, does the Court of Appeals reach the realm of "end result," "entirety" or "totality" as an overall measure of the reasonableness, propriety and legality of the Commission action. But even so "viewed," the order must be measured "as applied to the facts before it" (the Commission), that is, upon the entire record and "in its entirety," which comprehends in this case 13 *specific* findings and conclusions and the opinion of the Commission expressly incorporated therein *(R. V. 1, pp. 94-97)*.

Federal Power Comm. v. Natural Gas Pipeline Co., 315 U.S. 575, 586, 62 Sup. Ct. 736, 743.

The Court of Appeals, as is apparent from the foregoing quotations from its opinion, did not so "view" or measure the requisite legal and factual foundations of the Commission action.

It misconceived the controlling law applicable both to the Commission action and to the judicial review thereof, as declared in the Act and the decisions of this Court. As a result, that Court inevitably disregarded the law and ignored the facts. Upon the issue of "allocation," the Court of Appeals performed no function of actual judicial review what-

ever, merely the formal process of validating retroactively the Commission procedure.

ISSUES OF LAW AND FACT INVOLVED.

Presented in the "seventh question" and, therefore, under consideration in this review, are the following issues of law and fact relating to the question of "allocation":

(1) It is necessary, as a matter of law, that there be a separation and "allocation" of that portion of the property and facilities devoted to and the business transacted by the Company in connection with "the sale in *interstate commerce* of natural gas *for resale* * * *," from that portion of the property, facilities and business devoted to and transacted in connection with the operations to which "the provisions of this Act * * * shall not apply * * *" (Sec. 1(a)). This the Commission refused to do.

(2) The requisite "allocation" cannot be made by the device of an "allocation of costs," so-called. There must be an actual separation and apportionment of that portion of the properties and facilities, and a determination of the value thereof, employed in the business to which "the provisions of this Act shall apply," from that portion thereof to which "the provisions of this Act * * * shall not apply." That is, the requisite "allocation" must be made: (1) between "sales for resale" and all "direct sales;" and (2) between *intrastate* "sales for resale" and *interstate* "sales for resale," over the latter of which only does the Commission possess rate-regulatory authority under the Act. This the Commission refused to do.

(3) The requisite "allocation" must be made "independently of revenue" and "return." This the Commission refused to do.

(4) The requisite "allocation" must be made in conformity with established principles and settled and disclosed methods of procedure. This the Commission refused to do.

(5) The requisite "allocation" must be predicated upon the *actual* structure and operations of the Company to which it is to be applied. This the Commission refused to do.

SPECIFICATION OF ERRORS.

In view of the foregoing, the fundamental and fatal errors of the Commission and of the Court of Appeals, in approving the Commission action, are:

(1) The Commission "allocation of cost," so-called, is without authority of and contrary to law, and the Court of Appeals, in permitting such procedure to prevail, failed to perform the judicial function and duty imposed upon it by the Fifth Amendment of the Constitution of the United States and the Natural Gas Act.

(2) The Commission "allocation of cost," so-called, is not supported by "substantial evidence" and is contrary to the record evidence herein, and the Court of Appeals, in refusing to consider, view and test such action by "the facts before the Commission" failed to perform the judicial function and duty imposed upon it by the Fifth Amendment of the Constitution of the United States and the Natural Gas Act.

STATEMENT OF THE EVIDENCE.

1. Development and Operations of Colorado-Wyoming Company.

Colorado-Wyoming Company is a small company. It presently owns and operates a natural gas transmission system from a point near Littleton, Colorado, to Cheyenne, Wyoming, with several branches. The main trunk line is approximately 114 miles long, *of which 10.5 miles are in Wyoming.* Branch lines are approximately 81 miles in length, *of which 2.3 miles serving the United States government at Fort Warren, Wyoming are in Wyoming.* (See *Map, R. V. 3, Ex. 50, Appendix B, this brief.)* In 1939, the test year adopted by the Commission, the total gross sales of the Company were 3,332,446 M.c.f., producing $828,938 *(R. V. 3, Ex. 115, St. No. 1).* The total "sales for resale" of the Company were 1,706,000 M.c.f., producing a gross revenue of $579,000, of which "sales for resale" at the Cheyenne, Wyoming, "city gate" were 494,000 M.c.f., producing $182,000. Such Wyoming "sales for resale" were less than *one-third* of the total "sales for resale," both in quantities of gas sold and in gross revenue derived therefrom *(R. V. 1, pp. 126-128; R. V. 3, Ex. 245, St. No. 8).*

All cities, towns and communities supplied with natural gas by petitioner are served through contracts with sundry distribution companies "for resale for ultimate public consumption" *(R. V. 1, pp. 190-193)*. The only city or community served by petitioner outside the State of Colorado is the City of Cheyenne, Wyoming *(R. V. 1, p. 121)*. Industrial users and public authorities are served directly by petitioner under contracts of "direct sale" to such customers as the ultimate consumers *(R. V. 1, pp. 193-200)*. The only industrial user or public authority served outside of the State of Colorado is the United States government at Fort Warren, Wyoming *(R. V. 1, p. 121)*.

Colorado "direct sales" aggregated 1,622,231 M.c.f., producing $241,948, and Wyoming "direct sales" aggregated 18,527 M.c.f. in 1939, producing $7,410 *(R. V. 1, p. 127, R. V. 3, Ex. 202, p. 32)*.

Petitioner company began operations in 1925. During the years 1925 to 1927 that part of the Company's system from and including Fort Collins, Colorado, north to and including Cheyenne, Wyoming, was constructed. At that time petitioner secured its entire gas supply from the Wellington Field of the Continental Oil Company, near Fort Collins, Colorado. That gas supply had been expected and was relied upon to meet all requirements of the Company with respect to its then completed system for a long term of years. However, it became apparent early in the year 1929 that the supply of gas from the Wellington Field, then rapidly diminishing, shortly thereafter would be entirely exhausted. As a consequence, it became essential at once for the Company to secure a new and independent source of supply to continue service to its then customers and to protect its own investment. The only supply available was Texas gas from the Texas Panhandle-Denver pipeline of Colorado Interstate Gas Company. Accordingly, a twenty-year contract for the purchase of such Texas gas from the company last named was entered into in October, 1929, such gas to be purchased from Colorado Interstate Gas Company and delivered to Colorado-Wyoming Company at the Arapahoe metering station of this petitioner near Littleton, Colorado.

In the years 1929 and 1930, petitioner constructed 73 miles

of main 10-inch and 8-inch transmission line from the Arapahoe measuring station near Littleton, Colorado, to Fort Collins, Colorado, where connection was made with the then existing operating system of petitioner from Fort Collins, Colorado, to Cheyenne, Wyoming.

After construction of the Arapahoe-Fort Collins main line, and the commencement of purchase of gas at the "Arapahoe Station" near Littleton, Colorado, there was no enlargement or extension of facilities or service in or for Wyoming.

In the years 1929 to 1931, several branch transmission lines were constructed from the newly constructed Littleton-Fort Collins line for the sale and delivery of gas for resale for ultimate public consumption in about a dozen different cities and towns, all in the State of Colorado. In the years from 1932 to 1939, lateral lines also were constructed to serve sundry industrial customers under direct sales, all in the State of Colorado.

(R. V. 1, pp. 121-126).

The system is equipped with three compressor stations all in Colorado. The first installed in 1940 is adjacent to the Arapahoe Metering Station, the point of delivery of gas purchased from Colorado Interstate Gas Company. The second is near Arvada, and the third, near Wellington. The latter station re-pressures that gas, which thereafter is transported to and sold at Cheyenne, Wyoming *(See Map, Appendix B, this brief).*

There were thus in fact two separate and independent stages in the development of the Colorado-Wyoming Company system: (1) 1925-1929, the construction, completion and utilization of the Fort Collins-Cheyenne system served exclusively by the Wellington, Colorado, gas field of the Continental Oil Company; and (2) 1929-1941, the construction, completion and utilization of the Littleton-Cheyenne system and branches, now served (except about 2%) from the Texas-Panhandle field by the facilities of the Canadian River and Colorado Interstate companies. In this fundamental change in the Company's operations, the original and complete Fort Collins-Cheyenne system has become a part only of the now

operating Littleton-Cheyenne system. This historical development of the enterprise is significant and highly important in connection with the question of "allocation" now under consideration.

Colorado-Wyoming Company presently purchases almost all of its natural gas requirements in Colorado (near Littleton) from Colorado Interstate Gas Company. Such completed sale by the latter named company to petitioner is subject to the rate-regulatory authority of the Commission, and that authority was exercised by the Commission in the fixation of rates charged by Colorado Interstate Gas Company to Colorado-Wyoming Company at the Arapahoe metering station near Littleton, Colorado *(Colorado Interstate Gas Company v. Federal Power Commission, et al., 142 F. (2d) 943; R. V. 1, pp. 85, 90-94).*

The systems of the two companies are connected solely for the purposes of such sale, purchase and delivery. The two systems are entirely independent in management, control and operation. They are not "integrated" or in any sense a single system, or combined in any manner, or for any purpose. Upon this the record is clear. *(R. V. 1, pp. 120-121, 122-123; V. 3, Ex. 10, pp. 2-4).* This fact is admitted by the Commission in its opinion *(R. V. 1, p. 79)* and by the impressive fact that throughout the proceedings before the Commission and the rate determinations made by it, Colorado-Wyoming Company was of necessity considered and dealt with as wholly separate from and independent of Colorado Interstate Gas Company (save only that the Commission, unsupported by fact, resorted to the fiction of "integration" for purposes of its "allocation of cost," so-called). Colorado-Wyoming Company, *then an operating company,* was no part of or in any manner considered in or a part of the agreed plan of development *(R. V. 3, Ex. 1, p. 7)* of the Texas pipeline to Denver *(Op. of Ct. of App., 142 Fed. (2d) 943, 948-949).* but became merely a purchaser of such gas at a later date because of the unexpected exhaustion of its supply of gas from the Wellington Field in Colorado *(Op. of Ct. of App., 142 Fed. (2d) 943, 950) (Comm. Ex. 51, R. V. 3 pp. 1-6).*

It appears in the record, without dispute, that the system

of Colorado-Wyoming Company, as originally built and as later enlarged, was conceived, constructed and at all times operated on the foundation of the priority of domestic and commercial customers served under "sales for resale" contracts over "industrial" customers *(R. V. 1, pp. 128, 150-152)*.

"Priority" of domestic users and "curtailment" or "shut off" of industrial users, if necessary to supply the demands of domestic users, is a fundamental characteristic of the Colorado-Wyoming Gas Company system and of its operations. Such "priority," "curtailment" and "shut off" are provided and required in several ways:

By the contract between Colorado Interstate Gas Company and Colorado-Wyoming Gas Company *(R. V. 3, Ex. 101, pp. 4-5)*; by the respective "city gate" contracts covering "sales for resale" between Colorado-Wyoming Gas Company and Public Service Company of Colorado, Cheyenne Light, Fuel and Power Company and Greeley Gas and Fuel Company *(R. V. 1, pp. 190-192)*; by the respective contracts between Colorado Interstate Gas Company and Public Service Company of Colorado, Pueblo Gas and Fuel Company and Colorado-Wyoming Gas Company, in which the cities of Denver and Pueblo are given priority over Colorado-Wyoming Gas Company *(R. V. 3, Ex. 101, p. 4)*; and by the various franchises to the distribution companies granted in Arvada, Berthoud, Boulder, Fort Collins, Golden, Greeley, Johnstown, Loveland, and Longmont, *Colorado*, to supply natural gas purchased from Colorado-Wyoming Gas Company in the cities and towns named which provide for such preference "cut off" or "shut off" in substantially the same language as follows:

> The rates to be charged by the Company for natural gas service to industrial users for heating, manufacturing, power and other purposes, may be lower and different from those charged for domestic purposes, and the Company may contract with industrial users for the sale of such natural gas, provided that all such contracts contain a "cut off" clause which shall recognize the preferred rights of domestic users over industrial users, *(R. V. 1, pp. 150-152, 183-186)*.

Deliveries under *all* "direct sale" industrial contracts are subject to curtailment or "shut off" to satisfy the demands of domestic consumers *(R. V. 1, p. 195)*.

"Shut off" or "curtailment" of "direct sale" consumers occurred repeatedly in 1938, 1939 and 1940 *(R. V. 1, pp. 146-149, 152-157, 185-186)*.

2. The Commission "Facts" and "Method" of "Allocation of Costs."

The Commission, with full knowledge thereof, gave no consideration and no effect to the facts and factors of the operations of this Company in its so-called "Allocation of Costs for Wyoming Company" *(R. V. 3, Comm. Ex. 227)*, adopted by the Commission in its order *(R. V. 1, pp. 79-80, 82-83; R. V. 2, pp. 728-731, 786)* and approved by the Court of Appeals in its opinion herein *(R. V. 2, pp. 1112-1114)*.

The test, of course, is *not* "what was said" but "what was done" *(Dayton Power & Light Co. v. Public Utilities Comm., 292 U.S. 290, 296, 54 Sup. Ct. 647, 651)*.

(1) The Commission witness *Lyon* who prepared and presented the Commission "Allocation of Cost of Service," so-called, *(Comm. Ex. 227, R. V. 3)*, testified respecting that "Allocation of Costs" exhibit.

"Q. Mr. Lyon, did you give consideration or effect in your study to the fact that at the present time the entire capacity of the Colorado-Wyoming system is required to satisfy peak day demands of domestic consumers?

"A. No effect."

(R. V. 2, p. 786.)

(See also *R. V. 2, pp. 730-731.)*

(2) While the Commission opinion is entirely silent on the subject *(R. V. 1, pp. 79-83)*, the "peak day demand," which is declared to be inherent in the device of "allocation" adopted by the Commission for the single Texas-Wyoming project *assumed* to exist, is "the maximum day deliveries on Colorado Interstate Gas Co. Peak Day—Thurs., Feb. 9, 1939" *(Comm. Ex. 227, Table 2, R. V. 3)*. Such "deliveries" *by* Colorado Interstate Gas Company do not reflect either the maximum deliveries *to* or *by* Colorado-Wyoming

Company on February 9, 1939, or at any other time. *Such "deliveries" were not the "peak day demand" of Colorado-Wyoming Company at any time.* (See *Appendix D*, this brief).

(3) The deliveries *by* Colorado Interstate Gas Company *to* this Company on February 9, 1939, were 11,334 M.c.f., as used in the Canadian and Interstate Companies "allocation" *(Comm. Ex. 226, Table 2, Line 28, Col. 9, (R. V. 3))*, and 10,786 M.c.f., as used in the Colorado-Wyoming Company "allocation" *(Comm. Ex. 227, Table 2, Line 40, Col. 9 (R. V. 3))*. The deliveries of natural gas to *this* Company on February 9, 1939, by Highway Gas Company from the Berthoud, Colorado Field of 173 M.c.f. were ignored on the unfounded assumption that such deliveries were "for all practical purposes an exchange of gas" *(R. V. 1, p. 83)*. Thus, *the Commission evidence* as to the "peak day demand" of February 9, 1939, is in *substantial conflict* with itself.

(4) Next, the Commission so-called "peak day demand" of 10,786 M.c.f. was divided or "apportioned," *not* between *jurisdictional* "sales for resale" and *non-jurisdictional* "direct sales," in accordance with and as required by the Act. The division or apportionment *as made by the Commission and its staff* was between "Domestic, Commercial, Gas Lost" 7,014 M.c.f., and "Industrial" (both "direct sale" and "sales for resale") 3,772 M.c.f. *(Comm. Ex. 227, Table 2, Cols. 7, 8 and 9, Line 40 (R. V. 3))*. There is no basis in the Act for any such apportionment. Had the division or apportionment been made *even on the Commission evidence between the regulated and the non-regulated business as required by the Act*, it would have been "sales for resale" 9,009 M.c.f. and "direct sales" 1,777 M.c.f. *This is a vastly different ratio* (83.5% to 16.5%) than the ratio (65% to 35%) upon which the Commission acted, *as is apparent upon the face of the Commission exhibit, supra.* Yet as to the procedure of the Commission staff, the Commission in its opinion declares: "In preparing its allocation of costs for Wyoming Company, Commission staff departed from the use of system peak day for allocating demand (fixed) costs *and combined the separate class peaks of resale customers and of main line in-*

dustrial customers" (R. V. 1, p. 82). This the staff did not do. It "combined" *a portion only* of the assumed "separate class peaks of resale customers" and *a fictitious amount substantially in excess of* "the separate class peaks, * * * of main line industrial customers." The figures and percentages used by Commission staff were not divided *at all* between the regulated "resale customers" and the non-regulated "main line industrial customers," the Commission statement to the contrary notwithstanding *(Comm. Ex. 227, Table 2, Cols. 7, 8, 9 (R. V. 3))*. Thus, the Commission "allocation of costs," so-called, does not even purport on its face to be or produce an apportionment of "costs" as between the regulated and non-regulated operations *(Sec. 1(b) of the Act)*.

(5) The Commission declares: "The Colorado Portland Cement Company, the principal main line industrial user, is curtailed regularly during system peak days. *Its demand on the system peak day* is, in our opinion, a proper measure of its proportionate share of demand costs than its highest off-peak demand" *(R. V. 1, p. 82)*. There is no evidence whatever in the record of the "demand on the system peak day" of that Company. As pointed out, February 9, 1939, is assumed by the Commission to be that day (See *Comm. Exs. 226 and 227, Table 2* of each). The Cement Company was not "shut off" and in fact received no natural gas whatever on February 9, 1939, or during the entire month of February, 1939 *(Comm. Ex. 308, R. V. 3)*. Further, the Commission and its staff made no inquiry and offered no evidence as to whether or not the Cement Company was either shut off or curtailed on the actual "system peak day" of this Company in the years 1938, 1939 or 1940. What then was "its demand" on February 9, 1939, or on any system peak day? There is no disclosure. The record is silent. The Commission and its staff *in fact* did not know the demand of the Cement Company on February 9, 1939, unless it be concluded, *as was the fact*, that "its demand" at that time was zero. This suggests double talk in the Commission so-called "modification of method" adopted as to this Company *(R. V. 1, pp. 82-83)*. There was no demand in fact and there was not and could not be any

measure of demand at that time. There is no conflict in the evidence upon this matter.

(6) The Commission staff compilation of "separate class peaks of resale customers and main line industrial customers" *(Comm. Ex. 227, Table 2, Cols. 7, 8, 9, 10, 11)* adopted by the Commission *(R. V. 1, p. 82)*, admittedly are merely guesses, estimates and averages. It was conceded by the sole Commission witness on "allocation," on cross-examination, that most of the tabulated figures used by him in his exhibits were not even approximately accurate *(R. V. 2, pp. 735-739, 742, 743, 746-748, 748-754, 756-758, 760-762, 764-765, 771)*. The resulting division made by him between classes of customers *(Cols. 7 and 8)* necessarily is arbitrary, in view of the admitted *fact* that every figure in *Column 8* was a guess, an estimate or some sort of an assumed daily average of weekly or monthly deliveries. However, even on the theory of averages, *Commission Ex. 227, Table 2, Column 8 (R. V. 3)* cannot be reconciled with *Commission Exhibit 308 (R. V. 3)*. That the attempted set-up and apportionment *(Comm. Ex. 227, Table 2, Cols. 7, 8)* is not factual is also demonstrated by the discrepancy between that exhibit and *Commission Ex. 226, Table 2, Line 28*, and *Exhibit 308 (R. V. 3)*. The whole matter obviously is a speculation, not a fact finding.

(7) Even if it be assumed, *arguendo*, that a "cost of service allocation" be legal, the procedure indulged by the Commission and its staff does not follow any ordered or orderly principle, rule, formula or method. The Commission, in describing its "method," so-called, takes it completely out of the category of a principle, rule, formula or orderly procedure, by its statement that "largely" or "basically" it followed that "method" *(R. V. 1, p. 80)*. The "method" which the Commission declares "is by far the most practical and business-like" and by the use of which "all that can be accomplished by an allocation of physical property can be attained * * *" contemplates and involves a definite and specific plan, not a mere device. The procedure to produce the supposed allocation theoretically requires the apportionment of "costs" so-called (that is, under the Commission plan, expense and return),

as between the regulated and non-regulated operations, by a division of such "costs" into two principal ultimate categories, to-wit, "fixed" and "variable" costs, also variously described by the Commission as "capacity" and "volumetric" or "demand" and "commodity" costs. "Variable," "commodity" or "volumetric" costs "vary proportional to output or volume of sale," and so are "allocated in proportion to volume of gas purchased by each customer." The "fixed," "demand" or "capacity" costs are "proportional to the maximum demand on the system or system capacity." These are allocated in proportion "to each customer's responsibility for the peak day demand." *The two resulting ratios are widely different and, being different, it makes great difference in the final result, how the various costs are classified as between the two categories.* Under the Commission "method" and the "modification" thereof, it is of the very essence of the concept that the basis of classification and the application thereof be accurate, definite and certain to produce even an approximately correct "cost of service allocation." But that has not been the Commission procedure, and that is the very reason the Commission in its opinion undertook to protect itself by the qualification that only "largely" or "basically" did it follow the method described by it. This leaves the whole determination of the purported allocation under the Commission asserted "cost of service" in the air and at large. Thus, the Commission and its staff, in their uncontrolled discretion and without explanation, were enabled to and did classify, shift and apportion "costs" between the two categories, "fixed" and "variable" *(R. V. 1, pp. 80-82)*. That there is no governing principle, rule or method involved in the Commission procedure, is apparent from the record evidence.

The classification of "costs," as between "fixed" or "capacity" and "variable" or "volumetric," in the Commission "allocation cost of service," was purely "arbitrary and fortuitous," or, as stated by the Commission allocation witness, a matter of uncontrolled opinion or judgment *(R. V. 2, pp. 780-782)*. Such a classification of "costs," if of value, must result from the very nature of the particular costs involved, otherwise the nomenclature becomes an

empty formality. For example, wholly without regard to the source of earnings, as between the regulated and the unregulated industrial business, and even though "the industrials" are not paying their way, according to the evidence of that witness, the Commission witness and the Commission divided federal and state income taxes 50% to "fixed" and 50% to "variable" costs *(R. V. 2, pp. 780-782)*. Similarly, depreciation, return and other items were divided between such "fixed" and "variable" costs without any factual or other explanation or finding whatever *(Comm. Ex. 227, Table 6, R. V. 3)*.

The position of this petitioner is that "depreciation," just as plant itself, is a "fixed" or "demand" cost. Depreciation accrues, and was accrued by the Commission, from year to year without any relation whatever to the volume of gas transported and sold from year to year. Similarly, the plant itself stands in constant readiness to serve, which is the very essence of the concept of "fixed" or "demand" cost, which "cost," under the Commission theory includes return. Hence return *on that plant*, at the rate allowed by the Commission is equally a fixed "cost." Whether or not in a given case the utility can realize the full amount of that allowed return is quite beside the point, for there is, of course, no guarantee to the utility of realization upon that allowed rate of return. The issue here involved is simply whether or not such Commission action is to be without legal restraint or judicial control. And that issue is not resolved by calling such action the exercise of "judgment" and therefore not subject to review. The action complained of is not based upon any principle, rule or orderly and settled course of procedure, but results merely because the Commission so wills.

The "classification" of such "costs" being uncontrolled, it is fortuitous, and the result is both arbitrary and capricious. All *substance* of principle, formula or method is lacking. The procedure being a mere device, it cannot be tested either in fact or in law. It is administrative finality in conception and administrative supremacy in application.

The "peak day demand," if accurately ascertained and

utilized, which was not done in this case, is supposed to reflect the relative demand upon "system" or "system capacity" of the preferred domestic consumers and the inferior industrial customers. But this is not enough, for the Act measures and limits the Commission jurisdiction, not on a *use* basis but on a *sales* basis; that is to say, between "sales for resale" and "direct sales." *Nothing in the Commission "method," so-called, produces or is directed to, or contemplates any kind of "allocation" or "costs" between "sales for resale" and "direct sales."* The basis and apportionment under the Commission procedure is between "direct sale" and "sale for resale" industrial business, on the one hand, and all other sales operations on the other. The synthetic and also inaccurate apportionment of the alleged "peak day demand" *(Comm. Ex. 227, Table 2, R. V. 3)* was the ratio of 3,772 M.c.f. to 7,014 M.c.f. between *direct* and *resale* industrial sales and all other sales. The statutory apportionment on the same total figures (10,786 M.c.f.) is the ratio of 1,777 M.c.f. to 9,009 M.c.f. between "direct sales" and "sales for resale." The difference in the resulting ratios obviously is very great, and, even in an "allocation of cost of service" procedure, the statutory jurisdictional limitations must be conformed to. This was not done and no attempt was made to do it in this case.

(8) The extent *geographically* of the rate-regulatory jurisdiction of the Commission over this petitioner in this case necessarily must be determined before "allocation" in any form can be made. If the Commission, under the Act, does not have such jurisdiction over the *Colorado* "sales for resale" of this Company, obviously that portion of the property devoted to and the operations constituting such Colorado "sales for resale" must be *excluded* from the Commission action and order. Such is the very function of allocation. *(Smith v. Illinois Bell Telephone Co.*, 282 U. S. 133; 149, 51 Sup. Ct. 65, 69)

The full measure of and limitations upon the regulatory authority delegated to the Commission are declared by Congress in *Section 1* of the Act.

The Act provides:

"The provisions of this Act shall apply * * * to the

sale in interstate commerce of natural gas for resale * * * but shall not apply to any other * * * sale of natural gas * * *" (Sec. 1(b)).

"All rates and charges made * * * for or in connection with the * * * sale of natural gas subject to the jurisdiction of the Commission * * * shall be just and reasonable * * *" (Sec. 4(a)).

"Whenever the Commission after a hearing * * * shall find that any rate * * * in connection with any * * * sale of natural gas, subject to the jurisdiction of the Commission * * * is unjust, unreasonable * * * the Commission shall determine the just and reasonable rates * * * to be thereafter observed * * *" (Sec. 5(a)).

"Interstate commerce," the Act declares, "means commerce between any point in a State and any point outside thereof * * *" *(Sec. 2 (7))*. This language is without ambiguity.

It is to be observed that while this petitioner is a "natural gas company," as defined in the Act *(Sec. 2(6))* because "engaged in the transportation of natural gas in interstate commerce" and "the sale in interstate commerce of such gas for resale," it is not engaged in such "transportation" as a carrier for hire. *None* of its "rates and charges" are "made, demanded or received * * * for or in connection with the transportation * * * of natural gas." *All* of its "rates and charges" are "for or in connection with the * * * sale of natural gas." Such sales are in two categories: (1) sales for resale, and (2) direct sales to the ultimate consumer. The former, "sales for resale," *in interstate commerce only*, are subject to the jurisdiction of the Commission, while the latter, "direct sales," whether in interstate or intrastate commerce, and "sales for resale" in *intrastate* commerce are not "subject to the jurisdiction of the Commission" in this case.

Thus "the powers of the Commission were defined, and definition is limitation". *(Federal Radio Comm. v. Nelson Bros. Co.*, 289 U.S. 266, 276, 53 Sup. Ct. 627, 632).

The position of this petitioner is that the one and *only* sale for resale by it in *interstate* commerce, that is, "the sale

of natural gas across state lines," *(Federal Power Comm. v. Hope Natural Gas Co.,* 320 U.S. 575, 64 Sup. Ct. 281, 292) is at the "city gate," Cheyenne, Wyoming; and that *all* "city-gate" sales for resale in Colorado are made in *intrastate* commerce. See *Appendix B, this brief.*

This issue is neither considered nor resolved by the Court of Appeals in its opinion. The action of the Commission, in summarily disposing of this question by merely assuming rate-regulatory jurisdiction over *all* operations of Colorado-Wyoming Company, in Colorado as well as at the "city gate," Cheyenne, Wyoming, is adopted in silence by that Court. This petitioner is entitled upon this issue, as well as upon other issues in the case, to a separate, direct and specific judicial consideration and determination thereof, under the terms of the Natural Gas Act, the facts in this record and other controlling law.

The settled law is that "The determination of the extent of authority given to a delegated agency by Congress is not left for the decision of him in whom authority is vested."

Addison v. Holly Hill Fruit Products, Inc. (1944), —— U.S. ——, 64 Sup. Ct. 1215, 1220;

Federal Power Comm. v. Natural Gas Pipeline Co., 315 U.S. 575, 586, 62 Sup. Ct. 736, 743;

Crowell v. Benson, 285 U.S. 22, 56, 52 Sup. Ct. 285, 294;

Federal Radio Comm. v. Nelson Bros. Co., supra.

The facts *uncontroverted in the record* are definite and specific.

Colorado-Wyoming Company purchases its gas supply *in Colorado* (at Littleton) from Colorado-Interstate Gas Company. Such *completed* sale by the latter named company to petitioner is subject to the rate-regulatory authority of the Commission, and that authority has been exercised by the Commission *(Colorado Interstate Gas Co. v. Federal Power Commission, et al.,* 142 F. (2d) 943). *The systems of the two companies are connected solely for the purposes of such sale, purchase and delivery.* The two systems, however, are not "integrated," nor in any manner combined. They are entirely independent in management, control and

operation. Upon this, the record is clear. This is admitted by the Commission in its opinion *(Op. R. V. 1, p. 79)* and by the impressive fact that throughout the proceedings before the Commission and the rate determinations made by it, Colorado-Wyoming Company was of necessity considered and dealt with as wholly separate from and independent of Colorado Interstate Gas Company (save only that the Commission, unsupported by fact or law, resorted to the fiction of "integration" for purposes of its "allocation of cost," so-called). Colorado-Wyoming Company, then an operating company, was no part of nor in any manner considered in the agreed plan of development *(R. V. 3, Ex. 1, p. 7)* of the Texas pipeline to Denver *(Op. of Ct., R. V. 2, pp. 1093-1096) but became merely a purchaser of such gas at a later date because of the unexpected exhaustion of the Wellington Colorado Field (Op. of Ct., V. 2, p. 1096; Comm. Ex. 51, R. V. 3, pp. 1-6).*

BRIEF OF THE ARGUMENT.

At the outset of this argument it is deemed desirable to point out to the Court the position of Colorado-Wyoming Company respecting the operation and effect of the Commission "allocation of costs" here under review. In view of the grave errors of law which, it is submitted, permeate this action of the Commission, the substantial injury in fact and in law to this petitioner and the far-reaching consequences thereof cannot be tabulated accurately in dollars. If, as we believe, the basic legal concept, as well as the erroneous and unsupported assumptions and conclusions of fact upon which the Commission has proceeded, is not that authorized, required or permitted by law, then, as a matter of law, the order cannot stand *(Securities and Exch. Comm. v. Chenery Corp.*, 317 U.S. 80, 63 Sup. Ct. 454, 462).

The Commission distinguishes definitely between "allocation of physical properties" and "allocating costs including the return" *(R. V. 1, 80)*.

It is therefore clear that the Commission, although recognizing in law the necessity of allocation *(R. V. 1, pp. 79-80)*, discards entirely the principle of "allocation of property" and substitutes therefor what it describes as the "allocation of costs." We start then with the admitted fact that there is no "allocation of property" in this case *(R. V. 1, p. 80)*.

The principle of "allocation of property" and the Commission procedure of "allocation of costs," so-called, cannot be made to mean or be the same thing by words of rationalization, however clever.

The contentions of this Company are:

(1) The procedure or so-called "method" adopted by the Commission is without authority of and contrary to law; and

(2) That procedure and "method," as utilized by the Commission in this case, does not reflect either principle, formula or method; and is not predicated upon the actual operations of this Company; and is contrary to the uncontroverted evidence in this case.

(1). The Allocation Required by Law.

We consider first the existing requirements of law respecting allocation. The necessity for apportionment or allocation, according to the use of the property, and the revenues, expenses and income thereof arises from the fact that the properties and operations of the Company are devoted to and cover natural gas service over which the Commission has rate-regulatory authority, "sale in interstate commerce of natural gas for resale" and those over which the Commission does not possess rate-regulatory authority, being all other sales, both "direct" and "resale." Each of the classes of gas service is substantial in volume and in revenue.

The law is settled that the "allocation" herein required is the allocation of the value of the property, and of revenues, expenses and income "used in the regulated business and that used in the unregulated business" *(Smith v. Illinois Bell Telephone Co.*, 282 U.S. 133, 51 Sup. Ct. 65).

In the *Minnesota Rate Cases*, in which allocation of property was held essential, this Court directly repudiated the Commission procedure of "*allocating costs including the return.*" The case of *Simpson v. Shepard* has not been overruled. We quote from that opinion:

> "*The value of the use, as measured by return, cannot be made the criterion when the return itself is in question.* If the return, as formerly allowed, be taken as the basis, then the validity of the state's reduction would have to be tested by the very rates *which the state denounced as exorbitant.* And, if the return as permitted under the new rates be taken, then the state's action itself reduces the amount of value upon which the fairness of the return is to be computed.
>
> "*When rates are in controversy, it would seem to be necessary to find a basis for a division of the total value of the property independently of revenue,* and this must be found in the use that is made of the property. That is, there should be assigned to each business that proportion of *the total value of the property* which will correspond *to the extent of its employment in that business.* It is said that this is extremely difficult; in particular, be-

cause of the necessity for making a division between the passenger and freight business, and the obvious lack of correspondence between ton-miles and passenger-miles. It does not appear, however, that these are the only units available for such a division; and it would seem that, after assigning to the passenger and freight departments, respectively, the property *exclusively* used in each, comparable use-units might be found which would afford the basis for a reasonable division with respect to property used in common." (Emphasis added.)

Simpson v. Shepard, 230 U.S. 352, 33 Sup. Ct. 729, 765.

The necessity for *property* allocation likewise is explicit in the case of *Smith v. Illinois Bell Telephone Co., supra:*

"The separation of the intrastate and interstate property, revenues and expenses of the company is important not simply as a theoretical allocation to two branches of the business. It is essential to the appropriate recognition of the competent governmental authority in each field of regulation. * * * The proper regulation of rates can be had only by maintaining the limits of state and federal jurisdiction, and this can not be accomplished unless there are findings of fact underlying the conclusions reached with respect to the exercise of each authority. In view of the questions presented in this case, *the validity of the order of the State commission can be suitably tested only by an appropriate determination of the value of the property employed in the intrastate business* and of the compensation receivable for the intrastate service under the rates prescribed. * * * As to the value of that property, and as to the revenue and expenses incident to that business, *separately considered*, there should be specific findings. Railroad Commission v. Maxey, 281 U.S. 82, 83, 74 L. Ed. 717, 718, 50 S. Ct. 228." (Emphasis added.)

Smith v. Illinois Bell Telephone Co., 282 U.S. 133, 149, 51 Sup. Ct. 65, 69.

Again this Court, speaking through *Mr. Justice Cardozo:* emphatically held that allocation of property is essential and that any procedure omitting such allocation is arbitrary. We quote:

"* * * *The value of the property devoted to transmission may be measured upon the basis of mileage multiplied by demand.* United Fuel Gas Co. v. Railroad Comm. of Kentucky, supra, where the experts are stated to have agreed upon the method of division. *This does not mean that a like basis will be approved when mileage contributing to the supply is omitted from the reckoning.*" (Emphasis added.)

Columbus Gas & Fuel Co. v. Pub. Utilities Comm., 292 U.S. 398, 408-410, 54 Sup. Ct. 763, 768-769.

See also:

Wabash Valley Electric Company v. Ralph M. Young, et al., 287 U.S. 488, 53 Sup. Ct. 234.

True, the Natural Gas Act does not mention "allocation"; nor did the Commission draft of the Federal Power Act.

In 1935, when the Federal Power Commission appeared before Congress with its legislative proposal, *Section 211 (a)* as drafted (which as changed by Congress became *Section 208* of the Federal Power Act and *6(a)* of the Natural Gas Act), Congress was told certain things. Those who presented the Commission position declared that the section in question "fits right into the picture of the separation of this property between state and interstate use" and specifically that "we (the Commission) know of no way of dividing it other than that specified by the Supreme Court of the United States in the Minnesota rate case * * *."

(Hearings before Interstate Commerce Committee, House of Rep., H. R. 5243, Part 1, p. 505.)

Forgotten, of course, is this recognition of the law of allocation as the law then was and as it now is. Congress, as pointed out, rejected the "program" of the Commission for "the development of the social and economic stability of the United States," largely embodied in *Section 211 (c)* of the draft (as is clearly evident throughout the testimony of *Commissioner Seavey* and *Solicitor DeVane* of the Commission. *Hearings before Interstate Commerce Commission*, H. R. 5243, Part 1, March 7, 8, 9, 12, 13, pp. 382-576), by striking it from the Act in its entirety. The Commission,

as the record of events now unmistakably discloses, nevertheless proceeded with its non-statutory "social and economic" objectives. To facilitate realization of its declared objectives, allocation of property *deliberately* was cast aside and repudiated. Such procedure is not merely contrary to law, it is destructive of the *ordered* and orderly processes of government binding upon the executive, the administrative and the judiciary as well as the citizen.

The necessity for such allocation arises not from the terms or provisions of any statute but from the basic fact that "it is essential" under our constitutional system of government when the rate-regulatory jurisdiction exercised does not embrace all the operations or the facilities in their entirety of the regulated enterprise *(Smith v. Illinois Bell Tel. Co.*, 282 U. S. 133, 148-149, 51 Sup. Ct. 65, 68-69). And, of course, as this Court has many times declared, it is not the function of either Commission or Court "to provide a more comprehensive scheme of regulation than Congress has decided upon." Nor do the Interstate Commerce Act or other federal or state rate-regulatory acts mention "allocation." (See: *Simpson v. Shepard*, 230 U. S. 352, 33 Sup. Ct. 729, 753; *Smith v. Illinois Bell Tel. Co.*, 282 U. S. 133, 51 Sup. Ct. 65; *Columbus Gas & Fuel Co. v. Public Utilities Comm.*, 292 U. S. 398, 54 Sup. Ct. 763).

The controlling principle of "property allocation" is a requirement and command of law. It is perfectly obvious that "allocation" reaches the very heart of and controls directly the amount of the order of reduction herein involved.

That the legal principle of "allocation of property" was the settled and established law of the land, March 18, 1942, when the order of the Commission herein was promulgated *(R. V. 1, p. 84)*, there is not the slightest doubt. Such Commission action, therefore, constituted a deliberate attempt to overrule and repeal existing law and legislate by order or edict in conformity with its own theories and desires. The Commission, of course, was not and is not vested by law with any power or authority to make or create law. *That action*, therefore, involved more than administrative finality; *it was administrative supremacy* in that this Court now is urged by the Commission to validate retroactively

the lawlessness of its order of March 18, 1942. Such are the actual conditions confronting this Court, and such would be the legal effect and consequence of an order of this Court permitting the order of the Commission to stand.

Whether this Court *now;* lawfully and in harmony with our constitutional structure of government, may change the established, controlling and applicable principles of governing the allocation of property and operations by overruling its earlier decisions above referred to, certainly is a question attended with serious doubt. This is true, for Congress, the constitutional legislator, as this Court took occasion to point out in the *Hope Natural Gas Company* case, has acted and has made its purposes and intentions crystal clear in that behalf.

See,

Milk Wagon Drivers' Union v. Lake Valley F. Products, 311 U. S. 91, 103, 61 Sup. Ct. 122, 128;

United States v. South Eastern Underwriters Assn., (July 1944), —— U. S. ——, 64 Sup. Ct. 1162, 1175-1176, 1178;

Carmichael v. Southern Coal & Coke Co., 301 U. S. 495, 510, 57 Sup. Ct. 868, 872-873.

The issue *particularly* here presented is quite different and even more fundamental: May the Federal Power Commission without vestige of authority overrule this Court *in 1942,* and can this Court *in 1945* permit itself retroactively to acquiesce in and approve such a procedure? The point here involved is not, may this Court with propriety overrule its own decisions. The issue is the basic illegality of the Commission opinion and order overruling the decisions of this Court.

(2). The Commission "Allocation of Costs" is not predicated on "facts" and is not based upon the jurisdiction of the Commission under the Act.

Even if it be assumed for the purposes of this discussion, that some sort of an "allocation of costs" is permissible as a matter of law, yet *any* procedure followed must reflect the facts and factors of the operations of this Company, the

utility involved and affected by the Commission action in question, and such procedure also must be responsive to the statutory grant and denial of rate regulatory authority. That is, any such procedure must conform to controlling law and must be in harmony with the uncontroverted record facts relating to this Company and its operations. Otherwise, the action of the Commission becomes purely fortuitous, that is, self-willed. Such a "method" is a travesty upon the ordered and orderly processes of our constitutional government. True, administrative agencies are possessed of "discretion," but that discretion is controlled and limited by, and cannot supplant, the principles embodied in our system of government by law and expressly and affirmatively declared in the Natural Gas Act. If administrative action is not to be final and supreme, the courts must assume and exercise the fundamental judicial duties of review delegated to and imposed upon them by the Constitution, by legislative enactment and by the orderly and established growth of our institutions. The foregoing principles which control those who exercise public authority cannot be dismissed as "truisms," for only by the application of those precepts will American constitutionalism be preserved.

We are here considering the *facts essential* to and circumscribing the lawful action of the Commission. This inquiry is *not* to ascertain whether the evidence is slight or substantial. The question here presented is *not* as to the weight which should or could be attributed to evidence. *The bald issue under consideration is whether the Commission action respecting "allocation" is without evidence to support it or contrary to the uncontroverted relevant evidence in this record.* There are no findings of fact respecting the foundation facts, either in the opinion or the order under review *(R. V. 1, pp. 79-80, 82-83, 94-97)*. There are generalities and argumentative assertions and conclusions only. The entire position of the Commission on the principle of allocation is one of *ipse dixit*, and nothing else.

We summarize (see detailed consideration, *supra*) the *essential* facts, without which and contrary to which the Commission proceeded:

1. The Commission gave no effect whatever to the *un-*

disputed fact that the entire capacity of the system of this company is required to satisfy "peak day demands" of domestic consumers.

2. The Commission ostensibly for the purpose of measuring the relative "peak day demands" of the regulated "sales for resale" and the unregulated "direct sales" consumers as provided in the Act, *did not:*

(1) Adopt or even consider the "peak day" deliveries *to* or *by the system of this Company,* on February 9, 1939, or at any other time.

(2) Apportion in any manner, or at all, "deliveries" *to* or *by* this Company, or any other Company, between "sales for resale" and "direct sales," the ratio of which on February 9, 1939, was 83.5% to 16.5%. The only *attempted* Commission apportionment was between *direct and resale* industrial business, on the one hand, and *all* other sales on the other, the ratio of which on February 9, 1939, was 65.1% to 34.9%. The substantial difference between these ratios, when apportioned between "volumetric" and "capacity" costs, by whatever the Commission's undisclosed device was, produces widely variant results in the "excess earnings" of the *regulated* business. The Commission device, of course, operates *to increase greatly* such "excess earnings" of the regulated business. This makes the ordered rate reduction larger, and thus the "end result" directly is affected adversely to this petitioner.

3. The Commission staff "apportionment" (aside from non-compliance with the jurisdictions granted and withheld by the Act) is not accurate but consists merely of guesses, estimates and purported averages. This *the Commission evidence* which is in conflict with itself, manifests. There is no conflict whatever in the evidence on this matter.

4. The Commission declared that "the modification" of "method" adopted by it,—the demand on the system peak day of Colorado Portland Cement Company, largest industrial customer of this Company,—in some undisclosed man-

ner was used *(R. V. 1, p. 82)*. This the Commission did not do, and could not do, because on the *assumed* system peak day of February 9, 1939 (and during the entire month of February, 1939) the Cement Company received no gas whatever. This is established without contradiction *by Commission evidence*. Why such asserted "modification" was adopted as a matter of principle or "method" is not disclosed! What the relevancy thereof was to any scheme of "allocation" is not explained! Nor is it told how no use and no demand whatever, at a stated time, could be twisted into a "demand on the system peak day" in some undisclosed amount. If language means anything, "demand" cannot mean "no demand." In short, zero is not a demand; it is the entire absence of demand.

5. The Commission classification, apportionment and division of "costs" into "volumetric" and "capacity" costs does not result from the nature of those "costs." That is, whether a cost quoted is in fact "volumetric" or "capacity" in essential characteristics. Such so-called determination by the Commission and its staff was stated to be a matter of "judgment," but without a statement or explanation of the factors which influenced that "judgment." "Judgment" or "discretion" *under such circumstances*, being uncontrolled and unmeasured, becomes purely fortuitous. Thus the "method" is a device merely. Thereby the Commission is enabled to shift, sort and apportion such "costs" in the manner as it elects as between the two categories. The result is that the amount of the ordered reduction can be and is varied at will to accomplish whatever result the Commission may seek to attain. It is perfectly clear that "allocation" reaches the very heart of and controls directly the amount of the order of reduction herein involved.

6. As to the extent of the geographical rate-regulatory jurisdiction of the Commission in this case, the opinion is silent *(R. V. 1, p. 52)*. The Commission assumed that the situation in a "system extension" case *(Sec. 7 of the Act)*, as presented in the case of a *100% owned subsidiary and its parent company (Illinois Natural Gas Co. v. Central Illinois P. S. Co.*, 314 U.S. 498, 62 Sup. Ct. 381) is controll-

ing in this rate case. The determination in that case that the *subsidiary* company there involved was "a natural gas company" under the Act does not establish rate-regulatory jurisdiction in this case *over* Colorado "sales for resale" operations of this Company. Colorado-Wyoming Company admittedly is "a natural gas company" under the Act, but, under the Act, the rate-regulatory authority of the Commission extends *only* to *that part* of the operations of "a natural gas company," which in fact constitute "the sale *in interstate commerce* of natural gas for resale * * *" *(Sec. 1 (b))*. "'Interstate commerce' means commerce between any point in a state and any point outside thereof" *(Sec. 2 (7))*.

In the case referred to, the parent company, Panhandle Eastern, was engaged in interstate commerce. So the "wholly owned subsidiary," Illinois Natural, which was directly operated as a department or district of the parent company, also was a part of the interstate commerce activities of the parent company. In *this* case there is no relation of parent or affiliate between Colorado-Wyoming Company and Colorado Interstate Company. In *this* case there is no joint or common operation engaged in by Colorado-Wyoming Company and Colorado Interstate Company. In *this* case Colorado Interstate Company has nothing whatever in any way to do with the management, operation or control of this Company. The two-as-one doctrine of corporate identity, definitely applicable in the Panhandle Eastern-Illinois Natural system, has no application to the separate and independent systems of *this* Company and Colorado Interstate Company, which latter companies are equally separate and independent as a matter of law. The two-as-one doctrine being in fact applicable to Panhandle Eastern-Illinois Natural, that doctrine was equally applicable and was applied to that system by the Commission in the Panhandle Eastern "rate case." The rate reduction order in that case *by formal finding* treated Panhandle Eastern and Illinois Natural as one corporation, for the reason *(not present in this case)* that those two corporations "are under common control and ownership, and are operated as a single, interconnected and integrated system for the production, gathering, transportation, sale and delivery of natural gas" *(Detroit v. Pan-*

handle Eastern Pipe Line Company (F.P.C. 1942), 45 P.U.R. (n.s.) 203, 207-208, 222).

See,

Panhandle Eastern Pipe Line Company v. Federal Power Comm., 143 Fed. (2d) 488, 490.

Colorado-Wyoming Company purchases *all* of its *gas in Colorado,* of which about 98% thereof is purchased at the Littleton (Colorado) "gate" from Colorado Interstate Gas Company. Such purchase at Littleton is a complete transaction when the gas is metered and delivered by the Colorado Interstate Company to this Company. *Being a consummated sale, the Federal Power Commission has fixed and determined the "just and reasonable" Littleton "gate" price.* The fixation of the Littleton "gate" price or rate was accomplished in *a rate case* in which this Company was not concerned *(R. V. 1, pp. 90-94)* and which the Commission *admits* was "separate and distinct" from any rate regulation of this Company *(R. V. 1, p. 79)*. None of the natural gas so received by this Company *as* the purchaser thereof at Littleton, and thereafter sold *in Colorado* was transported or sold across state lines. This Company had nothing whatever to do with any natural gas of Colorado Interstate Company. It is only with respect to natural gas after sale *by that Company* and after delivery *to this Company,* i.e., natural gas belonging to and owned by this Company, that this Company exercises any control or dominion whatever. After such sale, the Colorado Interstate Company exercises no control or dominion whatever. There is *no evidence* in this record whatever from which it *could* be concluded that Colorado-Wyoming Company had or has any part or participation in the slightest degree in the production of natural gas in the Texas-Panhandle Field or in the transportation of that gas from Texas to Colorado and the Littleton "gate." While the Commission rendered lip service to the acknowledged fact that "the question of jurisdiction is one of fact and law" *(R. V. 1, p. 51)*, it thereafter deals with the question on the basis of its own self-sufficiency and uncontrolled "discretion." There are no findings of fact, simply assumptions. What are the assumptions indulged? Just this—after referring to the three companies as "separate operating entities" and stat-

ing the fact of and necessity for "three separate and distinct rate cases," the opinion asserts "However, to stop there is to ignore realities." What "realities"? According to the Commission, "The entire project *although involving facilities of three corporate entities is for all practical purposes a single project* now designed to produce, gather, transmit and sell natural gas from the Texas-Panhandle field to consumers along the line as far north as Cheyenne, Wyoming." This is clearly a conclusion which must find its justification *in facts.* What are the undisputed record facts?

This petitioner, Colorado-Wyoming Gas Company, is entirely separate and independent in structure, management, control and operation from Colorado Interstate Gas Company and Canadian River Gas Company, and throughout the proceeding was so recognized by the Commission as wholly separate from and independent of those two companies *(R. V. 1, pp. 45-79).* The petitioner is and has been *merely a purchaser* of gas from the Colorado Interstate Gas Company and nothing else at any time. This petitioner has no part, in fact or in law, in the production of natural gas in Texas by Canadian River Gas Company or in the transportation of such gas from Texas to the Littleton (Colorado) "gate" by Colorado Interstate Gas Company. This entire and complete independence of the three companies is recognized throughout the opinion and the order of the Commission in this case, *save only with respect to "allocation of costs," so-called.*

If the *three* companies are separate, distinct and independent projects in fact and in law, and three "separate and distinct rate cases" are "*necessary,*" as the Commission concedes *(R. V. 1, p. 79),* then what principle of law *permits* the Commission directly to reverse itself, that is, to conclude that it is "necessary" to treat the three "separate, distinct and independent" companies as a single project for purposes of allocation?

The argument advanced is simply one of convenience to the effect that if the rates of Canadian River Gas Company, the producing company are "unjust, unreasonable," then, since Canadian River Gas Company must reduce its rates

to Colorado Interstate Gas Company, Colorado Interstate Gas Company must in turn reduce its rates to Colorado-Wyoming Company. The generalized conclusion of the Commission is a *non sequitur*. It does not follow that "the rates of Canadian Company cannot be altered without simultaneously affecting the reasonableness of the rates of Colorado Company. Likewise, the rates of Colorado Company cannot be altered without affecting the rates of Wyoming Company" *(R. V. 1, p. 79)*. A reduction in the rates of Canadian River Gas Company *may* or *may not* indicate and require a reduction in the rates of Colorado Interstate Gas Company. Whether or not that result follows depends upon the business, operations and profits of Colorado Interstate Gas Company *only*. And, similarly, a reduction in the rates of Colorado Interstate Gas Company to Colorado-Wyoming Company does not *necessarily* affect the rates of Colorado-Wyoming Company. Again, that can be determined *only* from examination of the business, operations and profits of Colorado-Wyoming Company. The recognition by the Commission of the necessity for "three separate and distinct rate cases," one for each of the three companies, is proof that the rates of the three companies are not related as a matter of law. The amount paid for natural gas by Colorado Interstate Gas Company or Colorado-Wyoming Company is *a fact*. In a rate case relating to the particular company whose rates are under consideration, *that fact* is evidence relevant to the determination of whether the rates should or should not be reduced in such rate case.

What the Commission in fact did was to discard and repudiate the entire separation and independence of this Company *in fact and in law* from Canadian River Gas Company and Colorado Interstate Gas Company. It did this without reference to the general and settled law prohibiting any such procedure and without any legal explanation of why that law is not here controlling. Colorado-Wyoming Company is a segregated enterprise and must be so treated *(Smith v. Illinois Bell Telephone Co.*, 282 U.S. 133, 151, 51 Sup. Ct. 65, 70).

The failure of the Commission to make appropriate and responsible findings, its failure to base the order itself upon

evidence, and its failure to conform to its statutory charter of authority and other settled and established law of the land, each is error as a matter of law, which requires reversal of the decree of the Court of Appeals and vacation of the Commission order. This Court repeatedly has so declared.

"• • • It is impossible to say, that the standards which we have set forth were applied to the facts in this record. Hence, as in Florida v. United States, 282 U.S. 194, 215, 51 S. Ct. 119, 125, 75 L. Ed. 291, the defect is not merely one of the absence of a 'suitably complete statement' of the reasons for the decision; it is the 'lack of the basic or essential findings required to support the Commission's order.' And see United States v. Baltimore & Ohio R. Co., 293 U.S. 454, 464, 55 S. Ct. 268, 272, 79 L. Ed. 587; United States v. Chicago, M. St. P. & P. R. Co., 294 U.S. 499, 510, 511, 55 S. Ct. 462, 467, 79 L. Ed. 1023. Congress has made a grant of rights to carriers such as appellee. Congress has prescribed statutory standards pursuant to which those rights are to be determined. Neither the Court nor the Commission is warranted in departing from those standards because of any doubts which may exist as to the wisdom of following the course which Congress has chosen. *Congress has also provided for judicial review as an additional assurance that its policies be executed.* That review certainly entails an inquiry as to whether the Commission has employed those statutory standards. If that inquiry is halted at the threshold by reason of the fact that it is impossible to say whether or not those standards have been applied, then that review has indeed become a perfunctory process. If, as seems likely here, an erroneous statutory construction lies hidden in vague findings, then statutory rights will be whittled away. *An insistence upon the findings which Congress has made basic and essential to the Commission's action is no intrusion into the administrative domain.* It is no more and no less than an insistence upon the observance of those standards which Congress has made 'prerequisite to the operation of its statutory command.' Opp Cotton Mills, Inc., v. Administrator, 312

U.S. 126, 144, 61 S. Ct. 524, 532, 85 L. Ed. 624. Hence that requirement is not a mere formal one. Only when the statutory standards have been applied can the question be reached as to whether the findings are supported by evidence. * * *." (Emphasis added.)

United States v. Carolina Freight Carriers Corp., 315 U.S. 475, 488-489, 62 Sup. Ct. 722;

Wichita R. & L. Co. v. Public Utilities Comm. (1922), 260 U.S. 48, 58-59, 43 Sup. Ct. 51, 55;

Beaumont Sour Lake, etc. Co. v. United States, 282 U.S. 74, 86, 51 Sup. Ct. 1, 6, and cases cited;

Morgan v. United States, 298 U.S. 468, 479-481, 56 Sup. Ct. 906, 911-912;

Securities and Exchange Comm. v. Chenery Corp., 317 U.S. 80, 94-95, 63 Sup. Ct. 454, 462;

Interstate Commerce Commission, et al. v. Columbus and Greenville Railway Company, 319 U.S. 551, 560, 63 Sup. Ct. 1209-1213;

Federal Power Comm. v. Natural Gas Pipeline Co., 315 U.S. 575, 586, 62 Sup. Ct. 736, 743.

Under controlling law and the facts in this record, Colorado-Wyoming Company, as a segregated and independent enterprise, is not a part of the Texas natural gas production nor of the Texas-Colorado interstate carriage of natural gas. It purchases *all* of its natural gas requirements in Colorado, and the only natural gas which it handles or transports *in interstate commerce* is that sold for resale at the Cheyenne, Wyoming "city-gate." None of the natural gas sold by this Company in Colorado enters at any time into "interstate commerce," as expressly defined in the Act. Under the Act and the fundamental law of the land, there must be then a separation, apportionment and "allocation" of all Colorado business and operations from the "sales for resale" business and operations at Cheyenne, Wyoming, over which alone the Commission is granted rate-regulatory authority.

Thus, the Commission "allocation of costs" is not based on the facts, factors and operations of this Company, but is predicated upon *assumptions* and argumentative con-

clusions which are not supported by "substantial evidence" or any evidence, and in several instances are contrary to the record evidence as presented by the Commission itself.

It is, of course, evident, from the Commission opinion *(Op. R. V. 1, pp. 79-80, 82-83)*, that the foundation and basis of the Commission allocation is not disclosed, and that the basic and responsible findings required by law are absent. Neither the Court nor anybody else can, by examination of the opinion, ascertain or even approximately guess the facts relied upon by the Commission or the technique and method of computation employed by it. The staff, "principles and methods," the Commission declares, "*are adopted with the modification* that the coincident demands of all customers on the system peak day *(Note:* Not of Colorado-Wyoming Company) are used, and with exception of deliveries to Highway Gas Company" *(Op. R. V. 1, pp. 82-83)*. How and in what manner the technique, method and computations of Commission staff witness *Lyon (Comm. Ex. 227, R. V. 3)* were altered or changed, by the so-called "modification," is not disclosed or discernible. There are no findings. The Commission states that the modification was made, next states the final result, and nothing else. It is entirely clear also that the jurisdictional restraints of the Natural Gas Act are disregarded and the established principles of law governing allocation are discarded.

The principle controlling the judicial review of federal administrative agencies, such as the Federal Power Commission, was aptly and succinctly declared many years ago by *Chief Justice White* speaking for this Court:

"* * * It is, of course, true, as pointed out in Interstate Commerce Commission v. Illinois C. R. Co., 215 U.S. 452, 470, 54 L. ed. 280, 287, 30 Sup. Ct. Rep. 155, and since repeatedly applied, that findnigs of fact made by the Commission within the scope of its administrative duties must be accepted in case of judicial review, but that doctrine, as was also pointed out, does not relieve the courts in a proper case from determining whether the Constitution has been violated or whether statutory powers conferred have been transcended, or have been exercised in such an arbitrary way as to amount to the ex-

ertion of authority not given—doctrines which but express the elementary principle that an investiture of a public body with discretion does not imply the right to abuse, but, on the contrary, carries with it as a necessary incident the command that the limits of a sound discretion be not transcended; which, by necessary implication, carries with it the existence of judicial power to correct wrongs done by such excess. * * *"

United States v. Atchison, T. & S.F.R. Co., 234 U.S. 476, 34 Sup. Ct. 986, 993.

CONCLUSION.

Such a situation as is disclosed in the record here under review highlights both the fatal infirmity of and the serious danger inherent in the Commission procedure and practices of which we complain. If Commission action in any case is to be subject to real, even though "limited," "judicial" review, this is such a case. Such review has not been accorded this petitioner.

Respectfully submitted,

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APPENDIX A.

Pertinent Sections of the Natural Gas Act. (15 U. S. C, 717.)

NECESSITY FOR REGULATION OF NATURAL GAS COMPANIES.

Section 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

RATES AND CHARGES, SCHEDULES, SUSPENSION OF NEW RATES.

Section 4. (a) All rates and charges made, demanded or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

* * * * * * *

(e). * * * At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

FIXING RATES AND CHARGES; DETERMINATION OF COST OF PRODUCTION OR TRANSPORTATION.

Section 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order. * * *

(b) The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas.

ASCERTAINMENT OF COST OF PROPERTY.

Section 6. (a) The Commission may investigate and ascertain the actual legitimate cost of the property of every natural-gas company, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property.

(b) Every natural-gas company upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction.

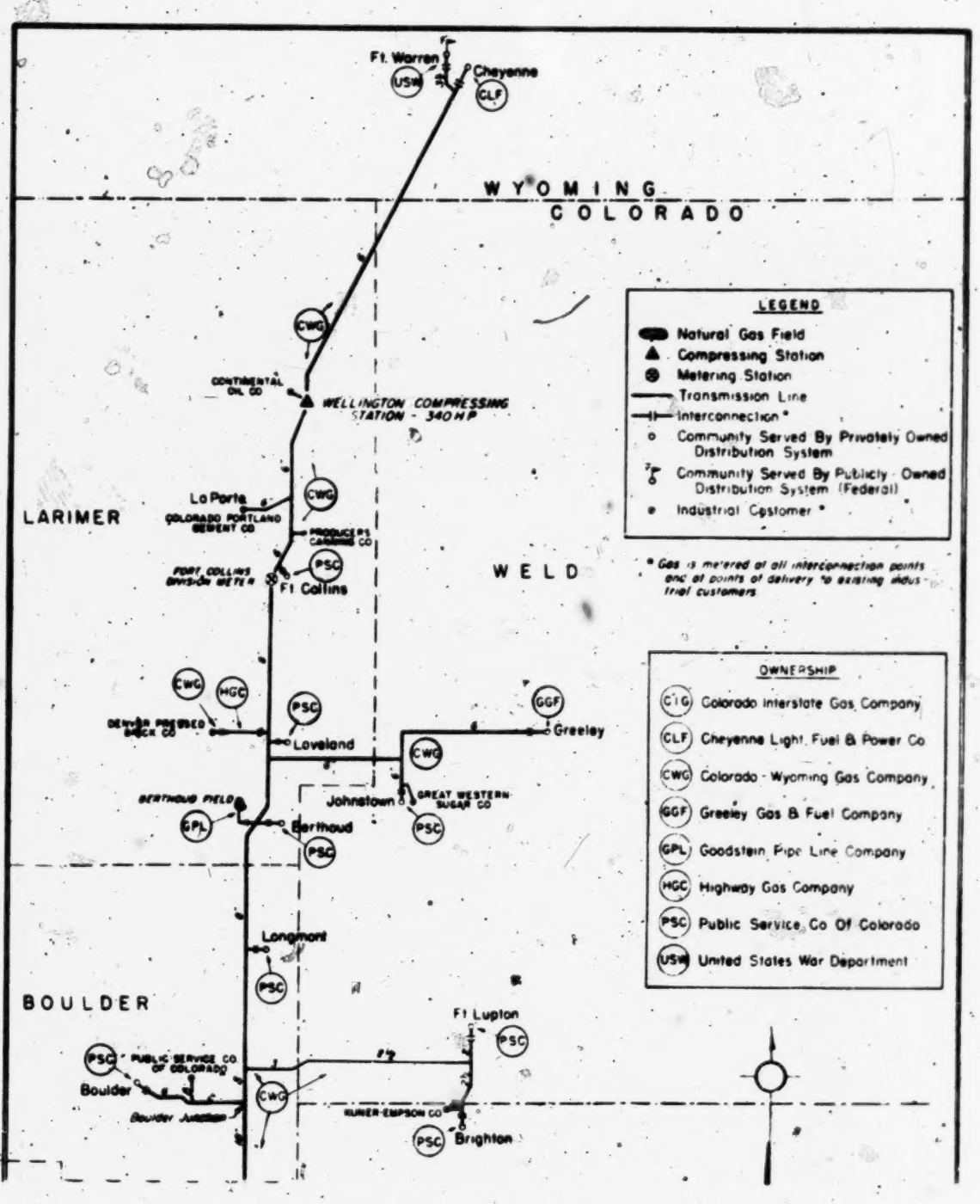
REHEARINGS, COURT REVIEW OF ORDERS.

Section 19. (b) Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the Circuit Court of Appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall

be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347).

Note:—Section 19 (b) of the Natural Gas Act is identical, word for word including punctuation, with the "Court Review of Orders" sections of the "Public Utility Holding Company Act of 1935" and the "Federal Power Act" (1935), to-wit: Section 24 (a) and Section 313 (a) thereof, respectively.

APPENDIX B.



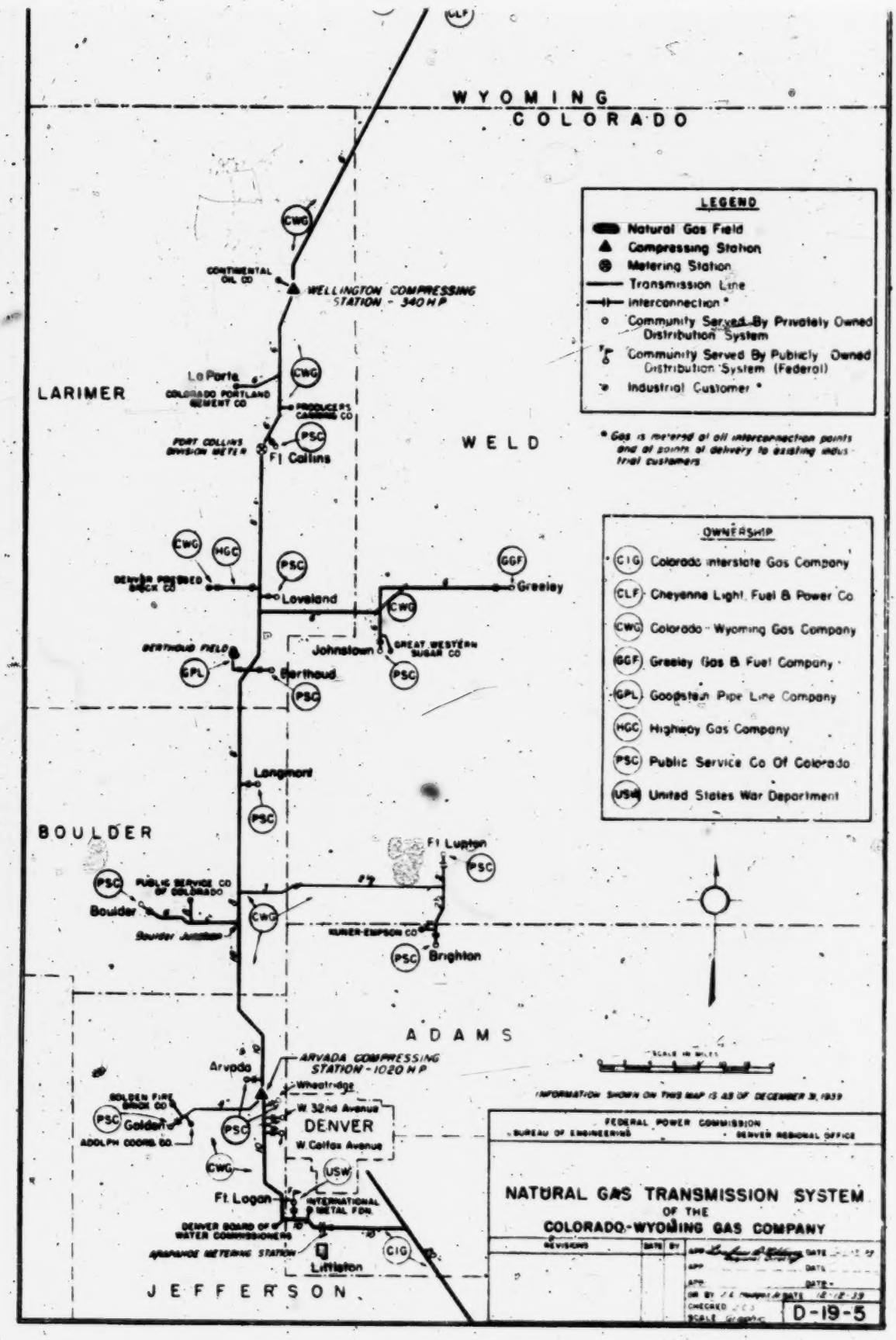


EXHIBIT NO. 50

APPENDIX C.

THE SCOPE AND DUTY OF JUDICIAL REVIEW RESTING ON THE COURT OF APPEALS UNDER THE NATURAL GAS ACT AND OTHER CONTROLLING LAW OF THE LAND.

The Act *(Appendix A)* specifically requires "a hearing" as a condition precedent to action, which hearing under our system of government is a term of substance, and clearly imposes the burden of proof on the Commission itself. *(Pub. Serv. Comm. v. Colorado-Wyoming Gas Co.* (F. P. C.) 43 P. U. R. (n. s.) 205, 231.) This apparently is recognized by that Court also. *(Colorado Interstate Gas Co. v. Federal Power Comm.*, 142 F. (2d) 943, 954.)

Moreover, there never has been any doubt about the meaning of the statutory language "whenever the Commission after a hearing * * * shall find that any rate * * * is unjust, unreasonable * * * *(Sec. 5(a))*. *Mr. Justice Brandeis* in a confiscation case, speaking for this Court, declared:

> "Congress by using the phrase 'whenever the Commission is of opinion, after hearing', prescribed quasi judicial action. Upon application of a carrier, the Commission must form a judgment whether the acquisition proposed will be in the public interest. It may form this judgment only after hearing. *The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it.* To refuse to consider evidence introduced or to make an essential finding without supporting evidence is arbitrary action." (Emphasis added.)
>
> *The Chicago Junction Case*, 264 U. S. 258, 265; 44 Sup. Ct. 317, 319-20.

The foundation of the Commission "rate making function" is largely factual as pointed out by this Court in the *Hope Natural Gas Co.* case, *supra (Secs. 6-8, 9, 10 and 14)*.

Hearings, appropriate records thereof, and governing rules of procedure, contemplate a full and complete trial of all relevant issues of fact and law *(Secs. 15 and 16)*.

The provision for rehearing before the Commission pro-

vides that such application "shall set forth *specifically* the ground or grounds upon which such application is based," not merely a general objection that the finding of "unreasonableness" is "arbitrary" *(Sec. 19(a))*. Thus the Commission is given opportunity to correct its errors, on the assumed concept that "true wisdom always is discreet, and not ashamed of wise retreat."

The judicial review *before that Court*, predicated *solely* upon the "transcript of the record" before the Commission (See *Appendix A, post)*, provides: (1) "No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing * * *," which means that all such objections so urged shall be considered by the reviewing Court; (2) "The finding of the Commission as to the *facts, if supported by substantial evidence*, shall be conclusive," or conversely, if not supported by "substantial evidence," cannot stand; (3) a party, on proper showing, may be permitted by Court order "to adduce additional evidence" before the Commission; (4) in such event, "The Commission may modify its *findings as to the facts* * * * and it shall file with the Court *such modified or new findings*, which if supported by substantial evidence, shall be conclusive, *and its recommendation*, if any, for the modification or setting aside of the original order;" and (5) "The judgment and decree of the Court, affirming, modifying or setting aside, *in whole or in part*, any such order of the Commission, shall be final * * *" *(Sec. 19(b))*. Herein *in plain language* the statute provides that usual and ample statutory review of rate making orders of administrative agencies, developed and established by long legislative and judicial practice and the undoubted applicable law of the land at the time of the passage of the Natural Gas Act.

The Congressional purpose and intent is made clear beyond any doubt. As declared by this Court in the *Hope Natural Gas Co.* opinion, "The Committee Report stated that the Act provided 'for regulation along *recognized* and more or less standardized lines' and that there was '*nothing novel in its provisions*', H. Rep. No. 709, *supra*, p. 3. * * * Sec. 4(a) and Sec. 5(a) contain only the conventional stand-

ards of rate making for natural gas companies." (320 U. S. 575, 64 Sup. Ct. 281, at page 294) (Emphasis added.)

What then was the state of the law with respect to the essential scope of review of rate-regulatory orders of administrative agencies, *at the time* of the passage of the Federal Power Act (1935) and the Natural Gas Act (1938).

The case of *St. Joseph Stock Yards Co. v. United States* (1936), 298 U. S. 38, 56 Sup. Ct. 720, embodies a complete discussion of the law of the land, by *Mr. Chief Justice Hughes* (298 U. S. 51) and by *Mr. Justice Brandeis* (298 U. S. 74-75). This Court in that case was reviewing an order of the Secretary of Agriculture fixing rates under authority of the Packers and Stockyards Act (1921), (42 Stat. 159, 7 U. S. C., Secs. 181-229), on suits to restrain and annul such order in accordance with the provision which Congress had made for reviewing orders of the Interstate Commerce Commission.

Speaking for this Court, *Chief Justice Hughes* declared (pp. 725-726):

"When the Legislature appoints an agent to act within that sphere of legislative authority, it may endow the agent with power to make findings of fact which are conclusive, provided the requirements of due process which are especially applicable to such an agency are met, as in according a fair hearing and acting upon evidence and not arbitrarily. * * * In such cases the judicial inquiry into the facts goes no further than to ascertain whether there is evidence to support the findings and the question of the weight of the evidence in determining issues of fact lies with the legislative agency acting within its statutory authority."

* * * * *

"Legislative declaration or finding is necessarily subject to independent judicial review upon the facts and the law by courts of competent jurisdiction to the end that the Constitution as the supreme law of the land may be maintained. Nor can the legislature escape the constitutional limitation by authorizing its agent to make findings that the agent has kept within that limitation. * * * Under our system there is no warrant for the view that

the judicial power of a competent court can be circumscribed by any legislative arrangement designed to give effect to administrative action going beyond the limits of constitutional authority."

Mr. Justice Brandeis, who certainly cannot be charged with ever overstating or enlarging the *necessary and minimum* scope of review, even in a confiscation case, declared, in his concurring opinion (pp. 735-736):

"'* * * Is there anything in the Constitution * * * that prohibits Congress making findings of fact by a highly trained and especially qualified administrative agency likewise conclusive, *provided they are supported by substantial evidence?*' (Emphasis added.)

* * * * *

"An order of the Secretary may, of course, be set aside for violation of the due process clause by prescribing rates which, on the facts found, are confiscatory; for the order of an administrative tribunal may be set aside for any error of law, substantive or procedural. * * * Moreover, where what purports to be a finding upon a question of fact is so involved with and dependent upon questions of law as to be in substance and effect a decision of the latter, the Court will, in order to decide the legal question, examine the entire record, including the evidence if necessary, as it does in cases coming from the highest court of a state. * * * It may set aside an order for lack of findings necessary to support it, * * * or because findings were made without evidence to support them, * * * or because the evidence was such 'that it was impossible for a fair-minded board to come to the result which was reached,' * * * or because the order was based on evidence not legally cognizable, * * * or because facts and circumstances which to have been considered were excluded from consideration, * * * or because facts and circumstances were considered which could not legally influence the conclusion, * * * or because it applied a rule thought wrong for determining the value of the property. * * * These cases deal with errors of law or irregularities of procedure."

The foregoing authoritative judicial declarations are supported by a cloud of decisions of all the courts of the land. Arbitrary action, whether judicial or quasi-judicial, cannot stand—that is: action without adequate determining principle; action, not supported by reason or logic; action, predicated on desire or will; action, which flows from refusal to hear, refusal to heed or neglect to give "substantial evidence" the weight it manifestly carries; action, ignoring the "indisputable character of the evidence"; and action grounded upon misconception of or defiance of controlling law. True, it is not incumbent upon or within the authority of that Court to "weigh evidence" or to rule upon "the wisdom" of the Commission action, *within the limits of the statutory authority of that body,* which has no roving commission either to declare national policy, make law or overrule existing law. It must be conceded that the Commission, in the hearing and determination of issues such as here are presented, sits as a quasi-judicial body under the limitations of a court, and in the process of fact finding is controlled by the same factors as other triers of the fact weighing the probative force of evidence. That the members of the Commission are appointed by law on the basis of actual or supposed experience does not alter the manner in which the functions of the Commission are to be *performed and measured.* The Act in all its pertinent provisions, respecting hearing, determination, order and review, so directs unmistakably.

In view of the foregoing, it cannot be that the *duty* of review imposed on that Court by the Act may be discharged by a mere process of attempted rationalization and a categoric blanket finding that the *ultimate conclusion* of "unreasonableness" *(Comm. Order, R. V. 1, p. 84)* is not arbitrary *(R. V. 2, p. 1114).*

"Findings as to the facts" and ultimate conclusions such as the conclusion of "unreasonableness" are quite different and always have been clearly differentiated by this Court and all other courts, federal and state. (See, *Baumgartner v. United States* (1944), 64 Sup. Ct. 1240.) Conclusions are of value when they are proven, and only then. As a matter of fact, that wide difference between facts and conclusions

currently is expressly acted upon in other circumstances, under similar or identical statutory reviews. If the rates under review are "unreasonable," they are "unreasonable" in a *measured* amount, and such measured amount is ascertained by the specific and cumulative determinations of fact and law necessarily incident to a "rate case." The conclusion of "unreasonableness," therefore, is neither an independent finding nor a finding at all; so, consequently, the ordered rate reduction—the only formal Commission action taken—must fall if either the basic factual or legal foundations thereof are insufficient or erroneous. Such is the specific mandate of the statute to that Court, and such appears to be the concurring view of this Court in *Federal Power Comm. v. Natural Gas Pipeline Co.*, 315 U. S. 575, 586, 62 Sup. Ct. 736, 743, where that Court, speaking through *Chief Justice Stone*, declared:

> "The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances. Once a fair hearing has been given, *proper findings made* and other statutory requirements satisfied, the courts cannot intervene in the absence of a clear showing that the limits of due process have been over-stepped. If the Commission's order, *as applied to the facts before it* and viewed in its entirety, produces no arbitrary result, our inquiry is at an end." (Emphasis added.)

The established and accepted scope of review then (and the opinion in the *Hope Natural Gas Company* case purports to follow and rely upon the foregoing announcement in the *Natural Gas Pipeline Company* case) comprehends compliance with the following: (1) "He who decides must hear," that is, must have an open mind to the issues in the particular case, unhampered by any predetermination or by non-existent statutory policies and objectives; (2) Constitutional rights must be regarded, not explained away; (3) Statutory powers, duties and limitations must be observed; and (4) the specific evidentiary foundations for the findings,

conclusions and order must be supported in the record. (See *Securities and Exchange Comm. v. Chenery* (1943), 317 U. S. 80, 63 Sup. Ct. 454, 459, 462; *United States v. Carolina Freight Carriers Corp.* (1942), 315 U. S. 475, 489, 62 Sup. Ct. 722, 730; *Federal Power Comm. v. Natural Gas Pipeline Co.* (1942), 315 U. S. 575, 586, 62 Sup. Ct. 736, 743; *Addison v. Holly Hill Fruit Products, Inc.* (1944), —— U. S. ——, 64 Sup. Ct. 1215, 1220).

This Court consistently throughout its history has insisted that while it is no part of the judicial function to inquire "whether the administrative power has been wisely exercised," this Court "must consider" and measure administrative action by "the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power." This Court also repeatedly has declared "We must decide whether the action of the court below was correct, irrespective of the reasoning by which such action was induced."

> "Beyond controversy, in determining whether an order of the Commission shall be suspended or set aside, we must consider (a) all relevant questions of constitutional power or right; (b) all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have been made; and (c) a proposition which we state independently, although in its essence it may be contained in the previous one, *viz.*, whether, even although the order be in form within the delegated power, nevertheless it must be treated as not embraced therein, because the exertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it, in truth, to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power. Postal Teleg. Cable Co. v. Adams, 155 U. S. 688, 698, 39 L. ed. 311, 316, 5 Inters. Com. Rep. 1, 15 Sup. Ct. Rep. 268, 360."
>
> *Interstate Commerce Commission v. Illinois Central Railway Company*, 215 U. S. 452, 30 Sup. Ct. 155, 160.

The decisions quoted and cited, *supra*, hold that if the record discloses that the Commission has proceeded with-

out supporting evidence or without warrant of law, no conclusion which the Commission reaches upon such improper basis can convert that wrong into right. It is only after the several specific determinations of material issues of fact have been found to be supported by "substantial evidence", and in conformity with controlling law that the Court of Appeals and this Court reach the realm of "total effect" or "entirety." *(Los Angeles Gas & Elec. Corp. v. Railroad Comm.*, 289 U. S. 287, 53 Sup. Ct. 637.)

Let there be no misunderstanding, the issues herein presented do not reflect mere "theory," "infirmities," "method" or "errors of reasoning;" they involve those fundamental matters and that very course of procedure detailed by *Mr. Justice Brandeis, supra*, as rendering an administrative order *totally invalid*, even in a confiscation case.

It is clear, therefore, that the direct function imposed by the Act *upon that Court*, as the court of primary review, specifically is to ascertain whether the findings and conclusions of the Commission and its order pursuant thereto meet the statutory requirements. Where powers and duties are delegated to an administrative agency, that agency may act only in accordance with such controlling statutory authority and standards. Otherwise, administrative action becomes self-willed and supreme over the legislative will and all legal restraint. (See *United States v. Carolina Freight Carriers Corp.*, 315 U. S. 475, 489.)

Congress in *Section 19(b)* of the Act "set out a criterion" to govern both the Commission and that Court on review, to-wit: "The finding of the Commission as to facts, if supported by substantial evidence, shall be conclusive." This also is the holding of the Circuit Court of Appeals for the District of Columbia, in the case of *Saginaw Broadcasting Co. v. Federal Communications Comm.*, 96 F. (2d) 554, 559 (Certiorari denied). (See, also pp. 558-561 and decisions there cited.) Therein that Court, in the statutory judicial review of the Commission orders under the Communications Act of 1934, 47 U. S. C. A., parag. 402(b) (1) declared that "Thereby the Act has set out a criterion to govern the Commission * * *." The review section under that Act is iden-

tical in purpose and meaning with *Section 19(b)* of the Natural Gas Act.

"* * * Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established. "It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." * * * It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.' *(National Labor Relations Board v. Columbian E. & S. Co.,* 306 U. S. 292, 299, 300, 59 S. Ct. 501, 505, 83 L. Ed. 660; *Consolidated Edison Co. v. National Labor Relations Board,* 305 U. S. 197, 59 S. Ct. 206, 83 L. Ed. 126; *Continental Oil Co. v. National Labor Relations Board,* 10 Cir., 113 F. (2d) 473, 481.)"

National Labor Relations Board v. Standard Oil Co. (C. C. A. 10), 124 Fed. (2d) 895, 903.

The Congress evinced no intention whatever to delegate a freedom and immunity from review by the Court of Appeals to the Federal Power Commission not possessed by other administrative bodies, such as the Securities and Exchange Commission, the Interstate Commerce Commission and the Secretary of Agriculture under the Packers and Stockyards Act. In fact, as we have seen, the Congress clearly and expressly declared it intended not to depart from the then "recognized," "standardized" and "conventional" law on the subject. Congress provided the same judicial review accorded with respect to the action of other federal administrative agencies, and neither the Commission nor the courts are warranted in departing therefrom because of doubts respecting, or disagreement with, the legislative course Congress has chosen.

For example, the "Court Review of Orders" of the Securities and Exchange Commission is authorized by *Section 24(a)* of the "Public Utility Holding Company Act of 1935" (U. S. C. A., Title 15, Sec. 79x; C. 687; 49 Stat. 834). *Section 24(a)* of that Act is *identical* in language and in punctuation with *Section 19(b)* of the Natural Gas Act. They are the same, word for word.

In *Securities and Exchange Comm. v. Chenery Corporation* (1943), 317 U. S. 80, 63 Sup. Ct. 454, this Court, speaking through *Mr. Justice Frankfurter*, declared:

"Congress has seen fit to subject to judicial review such orders of the Securities and Exchange Commission as the one before us. That the scope of such review is *narrowly circumscribed* is beside the point. For the courts cannot exercise their *duty of review unless they are advised* of the considerations underlying the action under review. If the action rests upon an administrative determination—an exercise of judgment in an area which Congress has entrusted to the agency—of course it must not be set aside because the reviewing court might have made a different determination were it empowered to do so. But if the action is based upon a determination of law as to which the reviewing authority of the courts does come into play, an order may not stand if the agency has misconceived the law. In either event the orderly functioning of the process of review requires that the grounds *upon which the administrative agency acted be clearly disclosed and adequately* sustained. 'The administrative process will best be vindicated by clarity in its exercise.' Phelps Dodge Corp. v. National Labor Relations Board, 313 U. S. 177, 197, 61 S. Ct. 845, 853, 85 L. Ed. 1271, 133 A.L.R. 1217. What was said in that case is equally applicable here: 'We do not intend to enter the province that belongs to the Board, nor do we do so. All we ask of the Board is to give clear indication that it has exercised the discretion with which Congress has empowered it. This is to affirm most emphatically the authority of the Board.' Ibid. Compare United States v. Carolina Carriers Corp., 315 U. S. 475, 488, 490, 62 S. Ct. 722, 729, 730, 86 L. Ed. 971. In finding that the Commission's order cannot be sustained, we are not imposing any trammels on its powers. We are not enforcing formal requirements. We are not suggesting that the Commission must justify its exercise of administrative discretion in any particular manner or with artistic refinement. We are not sticking in the bark of words. *We merely hold that an administrative order cannot be upheld unless the grounds upon which the agency acted in*

exercising its powers were those upon which its action can be sustained." (Emphasis added.)

This language is molded by the principle of the supremacy of the enacted law of the land and its application to both Commission and Court. It is not conceivable that the Congress intended these two *identical* review sections to have different meanings and variant effects. This is buttressed by the additional fact that the "Federal Power Act" (1935) was enacted at the same time as and in conjunction with the "Public Utility Holding Company Act of 1935," under the common title of "Public Utility Act of 1935." *Section 313(a)*, entitled "Court Review of Orders" in the Federal Power Act (U. S. C. A., Title 16, Sec. 825-1, C. 687, Title II, Sec. 213, 49 Stat. 860), also is *identical*, word for word, with the two review sections under consideration.

Furthermore, if that Court is not concerned legally with particular and material issues of fact, there is no occasion at all for bringing the record of evidence to that Court or for the statutory review itself, for relief from "confiscation" is still available through courts of equity. The salutary principle, that it is an error of law to render a decision predicated upon findings not supported by "substantial evidence" is the law declared in the Natural Gas Act, in conformity with the established and theretofore settled law of the land.

The principle is settled that the courts have no function to supervise the wisdom or policy of legislation, and that whether the errors thought to have been committed by Congress were those of commission or omission, yet the courts cannot refuse to respect the action of the legislative branch if within the constitutional power of that body. To neither the administrator nor the judge is delegated legislative choice.

> *Milk Wagon Drivers' Union v. Lake Valley F. Products*, 311 U. S. 91, 103, 61 Sup. Ct. 122, 128;
>
> *United States v. South Eastern Underwriters Ass'n.*, (July 1944), —— U. S. ——, 64 Sup. Ct. 1162, 1175-1176, 1178.

The legislature is presumed to have known the occasion

for legislation and to have known also its own legislative intentions. It also is to be assumed that that body embodied those intentions in the enacted law.

> "Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function."
>
> *Carmichael v. Southern Coal & Coke Co.*, 301 U. S. 495, 510, 57 Sup. Ct. 868, 872-873.

These principles are applicable to the consideration and application of the review provisions of *Section 19(b)* of the Act. By that section also, we are told, Congress was not changing the *then* law of the land respecting the judicial review of action by administrative agencies of the federal government. At the time of passage of both the Federal Power Act and the Natural Gas Act, the *law* as repeatedly and consistently declared by this Court was settled and clear as to the scope of such review. *Section 19(b)* is equally clear: "The finding of the Commission, *as to the facts*, if supported by substantial evidence, shall be conclusive." There is absolutely nothing therein about over-all "end result," "total effect," "entirety" or "consequences." That doctrine, we are now told, was announced in the *Natural Gas Pipeline Company* case 1942, *supra*, and thereafter applied in the *Hope Natural Gas Company* case (1944), *supra*.

In the latter case, this Court declares: "And when the Commission's order is challenged in the courts, the question is whether that order 'viewed in its entirety' meets the requirements of the Act;" citing the *Natural Gas Pipeline Company* opinion at *page 586 of 315 U. S.* The language in that decision obviously referred to is "If the Commission's order, *as applied to the facts before it* and viewed in its entirety, produces no arbitrary result, our inquiry is at an end." Neither is a formula, but both are variant statements of a controlling legal principle.

The foregoing quoted sentence from the *Natural Gas Pipeline Company* opinion is a part *only* of a single complete statement and idea stated in the paragraph of which the quoted sentence is the conclusion, both in form and substance.

The preceding language of the paragraph must be assumed to be something other than surplusage. If so, the entire paragraph, not the quoted sentence merely, tells us what this Court in 1942 stated the law to be. That language we quote:

"The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances. Once a fair hearing has been given, proper findings made and other statutory requirements satisfied, the courts cannot intervene in the absence of a clear showing that the limits of due process have been overstepped. If the Commission's order, as *applied to the facts before it and viewed in its entirety*, produces no arbitrary result, *our* inquiry is at an end." (Emphasis added.)

Federal Power Commission v. Natural Gas Pipeline Co., 315 U. S. 575, 586, 62 Sup. Ct. 736, 743.

Before the "end result" doctrine can come into play then, four prerequisites must be met according to this 1942 declaration of this Court in the *Natural Gas Pipeline Company* opinion, *supra*, to-wit: (1) "a fair hearing," and all that is involved therein under law, (2) "proper findings made," (3) "statutory requirements satisfied," both by Commission and Court, and (4) "limits of due process" must not be "overstepped." These four prerequisites are not mere words; they relate to the substance of rights and *duties* under our constitutional system. And these fundamental rights and duties obviously were not discarded or repudiated by the last sentence of the paragraph. Any such view casts doubt upon the good faith of this Court in 1942.

It is to be recognized that the order "*in its entirety*" in this case comprehends some 13 enumerated findings and conclusions, as well as the entire opinion incorporated therein by express reference *(R. V. 1, pp. 94-97)*. Moreover, "the facts before it" (the Commission) are *all* the evidentiary matters in the record. These then are the measures and

guides which this Court, in conformity with constitutional requirements and the uniform decisions of this Court, declares must be "viewed" on review. The reviewing function of that Court is judicial and "does not trench upon, or involve the exercise of, administrative authority" nor can it "be regarded as an attempt to vest in the court an authority to revise the action of the Commission."

"In considering the effect of the Commission's determination, the fundamental question is the intent of Congress. The language of the provision points to definitive action. The Commission is to '*determine.*' The Commission must determine '*after hearing.*' The requirement of a 'hearing' has obvious reference 'to the tradition of judicial proceedings in which evidence is received and weighted by the trier of the facts.' The 'hearing' is 'the hearing of evidence and argument.' Morgan v. United States, 298 U. S. 468, 480, 56 S. Ct. 906, 911, 80 L. Ed. 1288. And the manifest purpose in requiring a hearing is to comply with the requirements of due process upon which the parties affected by the determination of an administrative body are entitled to insist. Interstate Commerce Commission v. Louisville & Nashville R. R. Co., 227 U. S. 88, 91, 33 S. Ct. 185, 186, 57 L. Ed. 431. The Commission is not only authorized but 'directed' to give the hearing and make the determination when requested. We cannot think that a determination so prescribed and safeguarded was intended to have no legal effect. . . .

. . . . . .

"What is the scope of the judicial review to which respondent is entitled?

. . . . . .

"The condition which Congress imposed was that the Commission should make its determination after hearing. There is no question that the Commission did give a hearing. Respondent appeared and the evidence which it offered was received and considered. The sole remaining question would be whether the Commission in arriving at its determination departed from the applicable rules of law and whether its finding had a basis in substantial evidence or was arbitrary and capricious. Id. *That ques-*

tion must be determined upon the evidence produced before the Commission." (Emphasis added.)

Shields v. Utah Idaho Cent. R. Co., 305 U. S. 177, 182, 184, 185, 59 Sup. Ct. 160, 163, 164, 165.

In considering the character of the reviewing authority of the Circuit Court of Appeals under the provisions of the "Radio Act of 1927," as amended July 1, 1930, this Court declared:

"The powers of the Commission were defined, and definition is limitation. Whether the Commission applies the legislative standards validly set up, whether it acts within the authority conferred or goes beyond it, whether its proceedings satisfy the pertinent demands of due process, whether, in short, there is compliance with the legal requirements which fix the province of the Commission and govern its action, are appropriate questions for judicial decision. These are questions of law upon which the court is to pass. * * * *A finding without substantial evidence to support it—an arbitrary or capricious finding—does violence to the law.* It is without the sanction of the authority conferred. And an inquiry *into the facts* before the Commission, in order to ascertain whether *its findings* are thus vitiated, belongs to the judicial province * * *." (Emphasis added.)

Federal Radio Comm. v. Nelson Bros. Co., 289 U. S. 266, 274-279, 53 Sup. Ct. 627, 632-633.

It is significant that the opinion in the case last above referred to was pronounced by this Court *on the same day* and by the same justices as the opinion in *Los Angeles Gas & Elec. Corp. v. Railroad Comm.*, 289 U. S. 287, 53 Sup. Ct. 637, relied upon by this Court in both the *Natural Gas Pipeline Company* and *Hope Natural Gas Company* cases, *supra*.

The doctrine of *unmeasured* "end result" thus does not find any support whatever in the Natural Gas Act or in other similar or identical statutes under consideration, or in *St. Joseph Stock Yards Co. v. United States* (1936), 298 U. S. 38, 56 Sup. Ct. 720, or in any other decisions of this Court. It has been variously declared by this Court that, "unless there has been *error in the result* as well as error

in the reasoning," the administrative order must stand *(Dayton Power & Light Co. v. Pub. Utilities Comm.*, 292 U. S. 290, 298, 54 Sup. Ct. 647, 652); "When the legislative method is disclosed, it may have a definite bearing upon the validity of the result reached" *(Chief Justice Stone* dissenting in *West v. Chesapeake & Pot. Tel. Co.*, 295 U. S. 662, 693, 55 Sup. Ct. 894, 907); and again in the same case "Mere error in reasoning upon evidence introduced does not invalidate an order." "Where the decision below is correct, it must be affirmed by the appellate court though the lower tribunal gave a wrong reason for its action" *(J. E. Riley Inv. Co. v. Comm'r Int. Rev.*, 111 U. S. 55, 59, 61 Sup. Ct. 95, 97). These and similar statements reflect the unquestioned law that, if the "end result" *measured* by the issues of material fact in the record, and the law controlling the determination of such issues *is correct*, the court of review properly may not interfere with such regulatory result. With this principle of law we have no controversy.

In *Los Angeles Gas & Electric Corp. v. Railroad Commission*, 289 U. S. 287, 314, 53 Sup. Ct. 637, 647, this Court examined with particularity and in detail the "*result*," *based upon the specific evidence in the record and the controlling law*. In that case errors, assumed to have been made with respect to certain issues of fact, were considered and found to be neutralized by favorable allowances with respect to other elements of the rate base, *measured in the common denominator of dollars, that is, value.* This Court therein declared "* * * it is the function of the Court * * * to examine the result of the legislative action in order to determine whether its total effect *is to deny to the owner of the property a fair return for its use.*"

Similarly, in *Dayton Power and Light Co. v. Public Utilities Comm.*, 292 U. S. 290, 296, 54 Sup. Ct. 647, 651, this Court specifically appraised the end "result," *on the record and the issues of fact therein, as presented by the evidence.* "In determining the base on which a fair price is to be reckoned" as to "the value of the gas fields" of the Company in that case, this Court examined *in detail* the evidence upon and the determination by the Commission of that issue and the disposition made of it by the Supreme Court

of Ohio. This Court then concluded *on the record evidence relating to that specific question* that "the property interests of the appellant" had not been confiscated. The fact, that "what was said and what was done" by the Commission were different, was immaterial, because "what was done," *based on the record*, did not result in confiscation of the gas fields of the utility there involved.

Under the law, "result," that is, "the Commission's order, *as applied to the facts* before it, and viewed in its entirety," is measured and circumscribed by the requirements that there be "substantial evidence" upon the specific issues involved, and that controlling law applicable to the particular case, both sustain and justify "the conclusions reached."

Thus, none of the decisions of this Court when carefully considered, directly or by implication, is authority for the proposition: that a result *contrary* to correct reasoning can stand; or that a result predicated upon grounds upon which the Commission action cannot be sustained, can stand; or that a result, unsupported by substantial evidence as to issues of material fact, can stand; or that a result in disregard of or contrary to the terms of the statutory charter of regulatory authority, can stand; or that a result however wrong, under which the utility can manage to survive and continue to render service, can stand.

Neither language nor formula can create essential facts or satisfy basic requirements. So this Court, referring to the order under review, clearly did use the phrases, "as applied to the facts," and "viewed in its entirety" advisedly. With the facts then, must be laid that foundation, absolutely essential to support the Commission action in this case.

True, "the Commission's order does not become suspect" *merely* "by reason of the fact that it is challenged." But, it cannot be purified or rendered valid "in its entirety" or at all by a process of sanctification. It is not sacrosanct. Congress has otherwise ordered and in so doing "has not used meaningless words." The term "arbitrary" is under established law a general expression or conclusion indicating that with respect to one or more specific and material is-

sues the administrative order, measured by the record and controlling law, is not supported by substantial evidence or is contrary to law. Such is the unmistakable measure of review declared in the Natural Gas Act. If this Court of Appeals be not concerned with particular issues as such, why is the statutory review provided at all, for relief from "confiscation" is still available through courts of equity. Why does the reviewing ambit of that Court include the broad power of "affirming, modifying or setting aside, in whole or in part" the Commission order! Why the repeated reference to "substantial evidence" and to the "findings as to the facts" found in *Section 19(b)!* Why is the complete record including all the evidence required for that review! Why is the burden of proof imposed on the Commission if that burden is to be dispensed with directly or indirectly! Why is the review restricted to the specific points presented to the Commission on petition for rehearing before it! Why is the review commandingly directed to "the finding of the Commission *as to the facts*"!

We have no controversy with the position of that Court that upon review the order of the Commission "carries with it a presumption of correctness and the burden rests upon him who attacks it on review for want of substantial evidence to *show the absence of such evidence.*" *(Colorado Interstate Gas Co. v. Fed. Power Comm.*, 142 Fed. (2d) 943, 952). But the "presumption of correctness" is and remains a presumption, and it cannot supplant or excuse nonperformance of any clear judicial duty.

> "That the concurrent findings of two lower courts are persuasive proof in support of their judgments is a rule of wisdom in judicial administration. In reaffirming its importance we mean to pay more than lip service. *But the rule does not relieve us of the task of examining the foundation for findings in a particular case.*"
>
> *Baumgartner v. United States* (June 12, 1944), —— U. S. ——, 64 Sup. Ct. 1240.

That Court also recognized that "in the absence of substantial evidence" the action of the Commission is "the arbitrary exercise of power by administrative fiat and cannot stand." *(Colorado Interstate Gas Co. v. Fed. Power*

Comm., supra, p. 954.) The burden resting on the petitioner on review "to show the absence of such evidence," in the particular record before the Court, this petitioner meets.

What "evidence" then is it that the petitioner must "show the absence of"? Admittedly the evidence in this record is voluminous. Moreover, all the evidence in this record relates only to specific fact determinations, none to the conclusion of unreasonableness as such. A finding of unreasonableness, when justified, is merely the conclusion drawn from *all* determinations of material fact under the applicable rules of law.

This Court, speaking through *Mr. Justice Frankfurter,* declared, in the case above referred to:

> "The phrase 'finding of fact' may be a summary characterization of complicated factors of varying significance for judgment. Such a 'finding of fact' may be the ultimate judgment on a mass of details involving not merely an assessment of the trustworthiness of witnesses but other appropriate inferences that may be drawn from the living testimony which elude print. The conclusiveness of a 'finding of fact' depends on the nature of the materials on which the finding is based. The finding even of a so-called 'subsidiary fact' may be a more or less difficult process varying according to the simplicity or subtlety of the type of 'fact' in controversy. *Finding so-called ultimate 'facts' more clearly implies the application of standards of law. And so the 'finding of fact' even if made by two courts may go beyond the determination that should not be set aside here. Though labeled 'finding of fact' it may involve the very basis on which judgment of fallible evidence is to be made.*" (Emphasis added.)
>
> *Baumgartner v. United States, supra.*
>
> See: *Security Flour Mills Co. v. Comm. Int. Rev.,* —— U. S. ——, 64 Sup. Ct. 596, 598.

It is not the law that a rate making authority may, by making a finding that certain rates are unreasonable, preclude judicial review of the evidentiary and legal foundations of such finding. If, as we believe, the record abund-

antly discloses, the Commission proceeded without supporting evidence, and without warrant of law, no conclusion which the Commission reached upon such improper basis can convert that wrong into right. The review, therefore, as stated by this Court, must be "applied to the facts" and to the legal controls, not to the ultimate conclusion. This then is the "evidence" that the petitioner must "show the absence of."

It is only after the several specific determinations of material issues of fact have been found to be supported by "substantial evidence" and in conformity with controlling law that the court reaches the realm of "total effect" and can view the order "in its entirety."

While, of course, an administrative order will not be set aside for *mere* error in method of reasoning, yet if the proceeding is permeated with and pervaded by insufficiency of evidence or mistakes of law so that "the end result," so-called, is controlled or affected thereby, the order cannot stand. This is the substance of the fully and long established process of judicial review recognized in and provided by the Natural Gas Act, which contains "nothing novel in its provisions." Failure or refusal of the proper reviewing court to conform to this principle of American jurisprudence amounts to nothing less than the abdication of the mandatory judicial function imposed upon it, by law. The Court of Appeals is not free to cast aside that duty at will.

See: *Addison v. Holly Hill Fruit Products, Inc.*, —— U. S. ——, 64 Sup. Ct. 1215, 1223.

Whatever the limited duty of review incumbent upon this Court under writ of certiorari may be, the duty of that Court is neither a matter of discretion nor so limited. The reasons which impelled Congress to grant two different measures of review under the Natural Gas Act as well as other similar acts, are obvious. However the discretion and limitations inherent in one review cannot be read into and adopted as the measure of the other review.

APPENDIX D.

Colorado-Wyoming Gas Company
Peak-Day Purchases and Deliveries of Natural Gas—1938, 1939, 1940.

The peak-day purchases and deliveries in M.c.f., of natural gas made by Colorado-Wyoming Gas Company in the years 1938, 1939 and 1940 at 12.9 lbs. and 14.65 lbs. per square inch absolute, respectively, were:

	Gas Purchased	At 12.9 lbs. Pressure	At 14.65 lbs. Pressure
12/26/38	Colorado Interstate Gas Co.	15,315	13,486
	Berthoud Field	170	150
		15,485	13,636
	Gas Delivered	15,485	13,637
	Gas Purchased		
2/ 9/39	Colorado Interstate Gas Co.	12,871	11,334
	Berthoud Field	196	173
		13,067	11,507
	Gas Delivered	13,122	11,556
	Note: Total Industrial	593	522
	Sales for Resale Customers	12,529	11,034
1/18/40	Gas Purchased		
	Colorado Interstate Gas Co.	11,646	10,255
	Berthoud	228	201
		11,874	10,456
	Gas Delivered	12,803	11,274
	Note: Sales for Resale Customers		10,191

	Gas Purchased		
12/13/40	Colorado Interstate Gas Co.....	16,053	14,135
	Berthoud Field.....	151	133
		16,204	14,268
	Gas. Delivered.....	15,929	14,026
	Note: Sales for Resale Customers	11,468	10,098

(R. V. 1, pp. 186-187, 142.)

Commission witness *Lyon* testified with respect to system peak-day deliveries of Colorado-Wyoming Gas Company, as follows:

	At 12.9 lbs. pressure	At 14.65 lbs. pressure
12/26/38	15,244 mcf.	13,075 mcf.
1/16/39	13,707 mcf.	12,070 mcf.
2/ 9/39	12,672 mcf.	10,786 mcf.
5/17/39	14,209 mcf.	12,512 mcf.

(R. Vol. 1, pp. 186-187.)
(Comm. Ex. 227, Table 2, Line 40, Cols. 7-8-9.)

2/ 9/39	12,871 mcf.	11,334 mcf.

(Comm. Ex. 226, Table 2, Line 28, Cols. 7-8-9.)

Further testimony was given by Company witness *Hancock* as to "peak-day deliveries" in 1940 as follows:

"*The Trial Examiner:* Mr. Hancock, does the record reflect the peak day capacity of this line in 1940 and the peak day demand of the resale customers?

"*The Witness:* The peak day demand on January 18, 1940, was 11,646,000 cubic feet. On that day the peak day delivery to "sale for resale" customers is 10,191,000 cubic feet. During that day for just portions of the day there were small deliveries to certain of the industrials, but not for the entire day, which accounts for a small delivery to the industrials on that day.

"On November 12th 1940 the peak day demand was 15,817,000 cubic feet, which so far as I know is the highest peak ever experienced and it is my information that on that day the industrials were all off for a substantial

part of the day, as stated in regard to the Cement plant, some seven to nine hours, but that being such a recent peak the data pertaining to it has not been available in all respects.

"*The Trial Examiner:* Now, what was your peak day capacity for the year 1940, Mr. Hancock?

"*The Witness:* Both at the time of the January 18, 1940 peak and the November 12, 1940 peak. I would regard the system as fully loaded at both of those times."
(R. V. 1, p. 142.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 575.

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v.

FEDERAL POWER COMMISSION; COLORADO INTERSTATE GAS COMPANY, a corporation; CITY & COUNTY OF DENVER, COLORADO; PUBLIC SERVICE COMMISSION OF WYOMING; PUBLIC SERVICE COMPANY OF COLORADO; AND CANADIAN RIVER GAS COMPANY.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

REPLY BRIEF AND ARGUMENT OF PETITIONER.

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February 2, 1945.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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REPLY BRIEF AND ARGUMENT OF PETITIONER.

The brief of the Commission filed herein just prior to oral argument presents several matters which require discussion and clarification. The contention advanced is that "The Natural Gas Act does not prescribe any *method* of allocation. Congress thus left *the matter of allocation* to the expert judgment of the Commission, subject to judicial review in the event of an abuse of its administrative discretion in this regard" (p. 10). From this contention it appears clear that the Commission confuses principle

and method and in so doing dispenses entirely with controlling principle. Having dispensed with controlling principle, there is of course no test or measure of "abuse."

The principle of allocation as declared by this Court is that where the business of a utility embraces oprations, a portion of which is subject to the rate regulatory control of the Commission and a portion of which is not subject to that authority, it is necessary to segregate in some appropriate manner the property and income of the utility not so subject to the rate regulatory control of the Commission from those operations with respect to which the Commission may exercise such control. This is necessary in order that the Commission may not embark upon a rate regulatory control over which it has no authority. True enough, the Natural Gas Act does not prescribe any *method* of allocation. The method or formula of allocation, however, must apply the controlling principle to the required objective. The "method" or "formula" is an application in any given case of the controlling principle. Unless there is a controlling principle, the so-called "method" or "formula" is a total irrelevance.

The principle of allocation measures the quality and reasonableness of the formula. The Commission in effect denies the existence of the principle.

The decisions of this Court in the *Minnesota rate cases*, 230 U. S. 352, and in *Smith* v. *Illinois Bell Telephone Company*, 282 U. S. 183, and *Columbus Gas and Fuel Company* v. *Public Utilities Commission*, 292 U. S. 398, are disposed of on the assertion that the regulation of the interstate wholesale rates of natural gas companies under the Natural Gas Act does not present a constitutional question "since Congress, *if it so desired*, could regulate the intrastate rates of such companies which 'affect' their interstate rates and operations" (p. 11). Whether or not Congress, *if it so desired*, could have regulated the intrastate rates of such companies is immaterial, for in fact Congress, under the Natural Gas Act, *did not attempt to regulate such intrastate rates*. In either event the Commission is equally devoid of jurisdiction.

We are not concerned in this discussion with the precise "method" or "formula," provided the procedure of allocation conforms to and is an application of the principle involved.

It is asserted both by the Commission in its opinion and by counsel in their brief that "All that can be accomplished by allocation of physical properties can be attained by allocating costs, including return" (p. 12). It is clear that upon an allocation of property there results a determination of the proportion of property devoted to and the net income derived from the regulated business and that devoted to and derived from the non-regulated business. *It is a measured and determined amount of both.* The Commission's allocation of costs so-called does not disclose, and it can not be ascertained therefrom, either the proportions of the property devoted to or the net income derived from the regulated and non-regulated business, respectively. And it is not claimed either by Commission or counsel that such ascertainment is made by the Commission's procedure or can be ascertained therefrom. Thus, all that can be accomplished by an allocation of physical properties *cannot* be attained by allocating costs in the manner indulged in by the Commission. The contention of the Commission, therefore, is for an uncontrolled discretion. This is true because it is impossible to ascertain from the Commission "allocation," so-called, whether the property devoted to and income derived from the non-regulated business have been excluded in their entirety from the Commission's order of reduction.

The legal and controlling principle of allocation having been disposed of by *ipse dixit* and by linguistic magic, counsel then undertake to establish the proposition that "The Commission's allocation of costs of service was reasonable and appropriate" (pp. 12-21). It is to be borne in mind that the sole Commission exhibit (R. III, Ex. 227) upon "allocation" so-called was departed from by the Commission in its order (R. I, pp. 79-80, 82-83). The procedure which we are told was followed by the Commission purports to be set forth in *Appendix B, Schedules 1-4 of the Commis-*

sion's brief. Appendix B is very directly in the nature of an exhibit and obviously is appended to the brief in order to make *some* disclosure to this Court as to the Commission's procedure, which is not apparent, either from the record or from the opinion and order of the Commission. The Commission describes the procedure, *method* or *formula* adopted by it as the "demand and commodity" method. The particular "method" in question is one that has been used on occasion in the fixation of rate structures, but not in the application of the controlling principle of allocation to separate regulated and unregulated property and income. As a matter of fact, the method which the Commission's counsel declare the Commission followed was not used in the case referred to (p. 12), and this is evident from the cross-examination of the Commission allocation witness (R. II, pp. 774-779). Such "method" is predicated upon an assumed or hypothetical rate structure, and as applied to the "cost of gas purchased for sale" by petitioner from Colorado Interstate Gas Company does not represent the actual purchases of gas in the year 1939. The so-called "cost of gas purchased" is a synthetic figure, because predicated upon a rate structure of Colorado Interstate Gas Company which is wholly non-existent. It is to be noted that the Commission, in its order against Colorado Interstate Gas Company in Case 379 before this Court, ordered a total reduction in dollars but made no order whatever as to the character of the rate structure of Colorado Interstate Gas Company reflecting such reduction. The order provided that "Colorado Interstate Gas Company shall file * * * new schedules of rates and charges * * * to reflect the reductions ordered * * *." (R. I, p. 93.) The so-called "cost of gas purchased" is reflected in column (4) of Schedule 2 of Appendix B of the brief.

The same Schedule 2, in column (3), declares that on the alleged peak day adopted by the Commission, 1777 out of the total of 10,768 M. c. f., or 16.5 per cent of the total deliveries on that day were deliveries to direct sales customers, that is, the non-regulated business. Deliveries to resale customers, the regulated, are declared to be 9,009

M. c. f., or 83.5 per cent. *The Commission's figures, however, do not represent actual deliveries.* They are purely "estimates and averages," monthly or weekly, applied to the peak day. That the alleged deliveries to direct sales customers were averaged and estimated but not computed is uncontroverted in the record (R. II, pp. 735-736). The petitioner, however, offered in evidence the *actual* deliveries on the alleged peak day adopted by the Commission. The deliveries to resale customers, being the regulated business, were 11,034 M. c. f., or 95.5 per cent of all deliveries. The deliveries to direct sales customers, being the non-regulated business, were 522 M. c. f., or 4.5 per cent of the total (R. I, p. 186). The Commission's witness also testified that he did not know which of the direct sales customers were "curtailed" or "shut off" on that day, or whether or not during the course of the day all direct sales customers were "shut off" (R. II, pp. 731-732, 747). The actual delivery to the non-regulated customers on the assumed peak day being 522 M. c. f., the ratio percentage is 4.5 per cent instead of 16.5. As a consequence the *transmission capacity costs* in column (6) of Schedule 2 of Appendix B apportioned to "sales for resale" are 95.5 per cent instead of 83.5 per cent, thereby increasing such costs of the "sales for resale" almost $21,000 over the figure used by the Commission in that schedule. Such costs being increased by that amount of money, it is noteworthy that the entire net reduction ($21,000) ordered against this petitioner thereby is eliminated. This is not a matter of "discretion." This error of the Commission is shown by uncontroverted testimony.

The purpose of using a so-called "peak day" is to ascertain the relative demands upon the system and its capacity by the preferred regulated "sales for resale" customers as compared with the inferior rights of direct sales customers who are unregulated. The ascertainment of relative demands obviously requires a study of peak day conditions upon the system. This the Commission's only witness for allocation did not make. He did not give consid-

eration to nor did he know the relative demands of the two classes of customers on any other peak day, either in the year 1939 or in any other year (R. II, p. 736). For example, there was during the test year adopted by the Commission, which according to Exhibit 227, Table 2 (R. III), covered the "12 months ending June 30, 1939" a peak day on December 26, 1938, in which the deliveries of this petitioner were about 20 per cent in excess of the deliveries on February 9, 1939 (R. I, p. 186). February 9, 1939, was adopted as the peak day simply because it was the peak day of Colorado Interstate Gas Company, and for no other reason.

The statement of counsel that "The demands of the domestic and commercial consumers were higher on that day than any other in the test year 1939 (R. II, 750-751, 760-761)," is not supported by the record. The Commission allocation witness testified that he made no study of and did not consider the peak demand of domestic customers on any other day than February 9, 1939 (R. II, 736, 751, 760).

In apportioning costs between capacity and volume, it is said by counsel that "The annual return and income taxes on the transmission plant * * * were *considered* 50 per cent volumetric and 50 per cent capacity costs" (pp. 15-16). This distribution of income taxes and return on a 50-50 basis was done without any statement or showing of the reasons therefor, although as appears from Schedule 2 of Appendix B of the brief, the income derived from "sales for resale" was more than twice as much as that derived from direct sales. See also page 20 of Commission brief. In apportioning income taxes and return the ratio of net income from the regulated and the non-regulated business would appear to be the normal distribution as between the capacity costs and the volumetric costs, unless there were particular reasons why some other apportionment of these items should have been adopted. No reason was disclosed. The result is that the Commission's action becomes under such circumstances a finality without possible redress unless the courts examine the basis and propriety of such ap-

portionment. "Judgment" must be reasoned and reasonable, and of course must be predicated upon disclosed facts. The Commission "allocation of costs" procedure is so elastic that "the end result" produced is whatever result is desired by the Commission.

By the natural and logical apportionment of income taxes and return ($102,800—Table 6, Ex. 227, R. III) between volumetric and capacity "costs" on the ratio of the property devoted to and the profits derived from the sale for resale and direct sales operations, respectively, the so-called "costs" of the sales for resale business are increased not less than the $21,000 net reduction ordered as to this Company. See columns (5) and (6), Schedule 2, Appendix B, brief of Commission.

It is sought to dispose of the assumption by the Commission of rate regulatory authority over the *Colorado sales for resale* by reference to the case of *Illinois Natural Gas Company* v. *Central Illinois Public Service Company*, 314 U. S. 498. The inapplicability of that case to the situation here involved we have discussed in our principal brief. However, in order to exercise rate regulatory jurisdiction over *Colorado* "sales for resale" the Commission after treating Colorado-Wyoming Gas Company throughout the case as wholly separate and distinct from Colorado Interstate Gas Company which it is, and which the record shows it to be (R. I, pp. 120-121, 122-123) concluded, *for purposes of allocation* (R. I, p. 79), that Colorado Interstate Gas Company and Colorado-Wyoming Gas Company, and also Canadian River Gas Company, as well, *all* constituted but "a single project." Thus, the petitioner, which is independent in management, in operation, and in control from Colorado Interstate Gas Company, nevertheless is regarded in this respect as a part of that company and for other purposes as not a part of that company. It would appear that this company either is or is not a part of "a single project" extending from Texas to Wyoming. It cannot be both.

cannot be both. This issue is presented directly and specifically in paragraph (1) of "The Seventh Question," counsel to the contrary notwithstanding (p. 9).

Appendix B of the brief is an exhibit which should have been offered in evidence. The terms thereof should have been disclosed long since. It is perfectly obvious that the right of this petitioner to examine the exhibit and to cross-examine the witness or witnesses who prepared it was a valuable right. The denial of that right is a denial of the very elements of procedural due process which the late Mr. Justice Holmes defined as "the rudiments of fair play." To say, as counsel do (p. 20), that Appendix B "was merely a mathematical calculation" flowing from the Commission's statement of procedure in its opinion as applied to Exhibit 227 (R. III) is belied by the facts. That such is not the case is readily ascertainable from an examination of Exhibit 227 and comparison thereof with Appendix B of the brief. More than that, in Appendix B are set forth only totals. How those totals are arrived at in the various columns of cost is not disclosed.

The Commission's "allocation of costs" clearly, therefore, is predicated neither upon principle nor upon the facts of this record and the designation of the Commission's procedure as a "method" or "formula" does not change the evident and compelling fact that that procedure was merely a device.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 575

COLORADO-WYOMING GAS COMPANY, A CORPORATION, PETITIONER

v.

FEDERAL POWER COMMISSION; COLORADO INTERSTATE GAS COMPANY, A CORPORATION; CITY AND COUNTY OF DENVER, COLORADO; PUBLIC SERVICE COMMISSION OF WYOMING; PUBLIC SERVICE COMPANY OF COLORADO; AND CANADIAN RIVER GAS COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE FEDERAL POWER COMMISSION AND PUBLIC SERVICE COMMISSION OF WYOMING, IN OPPOSITION

OPINIONS BELOW

The opinion and orders of the Federal Power Commission (R. I, 45–97) are reported in 43 P. U. R. (N. S.) 205. The opinion of the circuit court of appeals (R. II, 1092–1120) is reported in 142 F. (2d) 943.

JURISDICTION

The judgment of the circuit court of appeals was entered on July 8, 1944 (R. II, 1120). A petition for rehearing (R. II, 1123–1160) was denied on August 9, 1944 (R. II, 1161). The petition for a writ of certiorari was filed on October 10, 1944. Jurisdiction of this Court is invoked under Section 19 (b) of the Natural Gas Act, and Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether natural gas, produced in Texas and transported without interruption into Colorado where it is bought by petitioner, is sold "in interstate commerce" within the meaning of the Natural Gas Act when petitioner sells that gas within the state for resale.

2. Whether the Commission's allocation of costs between petitioner's direct sales and the cost of its sales for resale is appropriate.

3. Whether the reduction in petitioner's rates ordered by the Commission will result in "just and reasonable" rates.

STATUTES INVOLVED

The applicable portions of the Natural Gas Act are set forth in the Appendix, *infra*, pp. 14–18.

STATEMENT

The order here under review, reducing the interstate wholesale rates of petitioner, Colorado-

Wyoming Gas Company, was entered in a consolidated proceeding which also involved the interstate wholesale rates of Colorado Interstate Gas Company ("Colorado Company"), from which petitioner purchases approximately 98% of its gas requirements (R. I, 94),[1] and the interstate wholesale rates of Canadian River Gas Company ("Canadian Company"), from which Colorado Company, in turn, obtains such gas. The gas purchased by petitioner from the Colorado Company originates in the Panhandle field in Texas and flows, through the interconnected pipe line of the Canadian Company and Colorado Company, from Texas, through New Mexico, to a point near Littleton, Colorado. There the gas flows without interruption into the main pipe line of petitioner which runs approximately 114 miles to Cheyenne, Wyoming where petitioner sells for resale to the Cheyenne Light, Fuel and Power Company. Petitioner's facilities also include compressor stations and a number of laterals through which sales are made in Colorado for resale. Sales are also made directly to industrial consumers in Colorado and, in small quantities, to two United States army posts. (R. I, 47–50, 94.)

[1] Petitioner obtains some 2% of its gas from a local source in Colorado, but this is, in substance, an exchange arrangement as to which the Commission assumed that costs equal revenues (R. I, 83).

On January 9, 1939, the Public Service Commission of Wyoming filed a complaint against Colorado Company, Canadian Company, and petitioner, alleging that the rates charged by petitioner for gas sold to its affiliate, Cheyenne Light, Fuel and Power Company, for resale in Cheyenne, Wyoming, were unjust, unreasonable, and unduly discriminatory (R. I, 29–31). A similar complaint against Colorado Company and Canadian Company had been filed by the City and County of Denver, Colorado, on December 22, 1938, in respect of the rates charged by Colorado Company for gas sold to Public Service Company of Colorado for resale in Denver (R. I, 42). The Federal Power Commission, on March 14, 1939, instituted an investigation, on its own motion, of all the interstate wholesale rates of Colorado Company, Canadian Company, and petitioner (R. I, 38–41).

The investigation and hearings on the complaints were consolidated by the Commission; hearings were begun on October 28, 1940 and held on 102 days (R. I, 46). After submission of briefs, the Commission, on March 18, 1942, issued its opinion and orders finding that the interstate wholesale rates of Canadian Company, Colorado Company, and petitioner were excessive (R. I. 45–97). The first order required Canadian Company to reduce its rates by $561,000 per year

(R. I, 87–90). The second order required Colorado Company to reduce its interstate wholesale rates by $2,065,000 per year, which amount was represented in part by the ordered reduction in Canadian Company's rates to Colorado Company (R. I, 90–94).[2] In promulgating the third order, the one here under review, the Commission found that petitioner's revenues were $159,000 in excess of costs and a fair return, and that $119,000 of such excess was allocable to petitioner's sales for resale. Petitioner was accordingly directed to reduce its wholesale rates by $119,000 (R. I, 94–97). Since the Commission had ordered Colorado Company to reduce its rates to petitioner by $98,000 per year, the net decrease in the revenues of petitioner will not exceed $21,000 (R. I, 83).

In requiring petitioner to reduce its interstate wholesale rates by $119,000 annually, the Commission found the actual legitimate cost of petitioner's plant on December 31, 1939, to be $1,678,878 (R. I, 95). From this amount the Commission deducted $395,944 for accrued depreciation and $12,183 for contributions in aid of construction; it added $16,235 for working capital and $78,813 covering gross plant additions to December 31, 1941. This resulted in a rate base

[2] Petitions for writs of certiorari to review the lower court's affirmance of these orders are now pending. (Nos. 379 and 380, this Term.)

of $1,365,799 which was rounded to $1,366,000. (R. I, 95). Petitioner's claim of $175,000 for "going value" was found to be an estimate unrelated to any costs or outlays and was rejected by the Commission (R. I, 68).

The Commission allowed a 6½% return on petitioner's rate base, which return it found to be "fair and reasonable" (R. I, 93). It adjusted petitioner's cost of purchased gas to reflect the $98,000 annual reduction in Colorado Company's rates to petitioner, and with certain minor exceptions, allowed all necessary operating expenses, including taxes, shown by petitioner's books for the test year 1939 (R. I, 95). The Commission also allowed an amount to amortize rate case expenses over a five-year period (R. I, 95). The annual allowance for depreciation was determined on the basis of the economic service lives of petitioner's property, such allowance being consistent with the amount deducted for accrued depreciation in arriving at the rate base (R. I, 61).

In arriving at the amount of the reduction in petitioner's interstate wholesale rates, the Commission made an allocation of petitioner's cost of service including in such cost the fair return on the rate base, and determined the excess of revenues over costs for direct sales and for interstate sales for resale (R. I, 83, 85, 96).

The petitioner's application for a rehearing and stay of the Commission's order (R. I, 97) was denied by supplemental opinion and order of May 13, 1942 (R. I, 98–103). Petitioner thereafter filed a petition for review (R. I, 1–19) in the Circuit Court of Appeals for the Tenth Circuit, which heard argument on September 14–15, 1943 (R. II, 1091), handed down its opinion on May 16, 1944 (R. II, 1091–1120), and entered its judgment on July 8, 1944 (R. II, 1120), affirming the Commission's order.

ARGUMENT

Petitioner sets forth thirteen questions (Pet. 2–7) and seeks to develop the materiality of such questions and the necessity for their consideration by this Court in a fifty-four page brief (Br. 17–71). Many of the questions involve alleged errors in recent decisions of this Court which we deem unnecessary to discuss.

1. Petitioner admits that its sales of natural gas at the "city gate" of Cheyenne, Wyoming, for resale in that city, are subject to the Commission's jurisdiction under the Act, but contends that its sales at various "city gates" in the State of Colorado are not "in interstate commerce" and are therefore beyond the Commission's jurisdiction (Br. 18–24). But under the decision of this Court in *Illinois Natural Gas Company* v. *Central*

Illinois Public Service Company, 314 U. S. 498, 508, it is clear that in transporting Texas gas from Littleton, Colorado, and selling it at various "city gates" in Colorado for resale, petitioner "engages in interstate commerce in gas and in its interstate transportation" within the meaning of the Natural Gas Act. In the *Illinois* case, the company's facilities were located wholly within the State of Illinois and it there purchased gas which had been brought into the state from Texas and Oklahoma. The Company transported such gas to various "city gates" in Illinois, where it was sold to distributing companies for resale. Here, as in that case, petitioner "makes the first sale to distributors for resale to which the Act in terms applies."

2. Petitioner objects to the Commission's allocation of costs between its direct sales and its sales for resale and contends that the Commission was required to make an allocation of property (Pet. 4–5). We submit that this contention is without merit.[3] The Natural Gas Act does not prescribe any method of allocation, nor even require that any formal allocation be made. The Commission found that "all that can be accomplished by an allocation of physical properties can be attained by allocating costs including the re-

[3] An identical contention is discussed in the Brief in Opposition, pp. 17–18, in Nos. 379 and 380, this Term.

turn" (R. I, 80). This method, which the Commission termed "by far the most practical and business-like", was described in its opinion as follows (R. I, 80–82): "* * * * costs are divided essentially into two groups, fixed and variable. Fixed costs are largely joint costs which do not vary with volume of sales. The total amount of such costs are largely proportional to the maximum demand on the system or system capacity. Accordingly, these costs have been allocated basically in proportion to each customer's responsibility for the peak day demand. Variable costs are largely those that vary proportional to output or volume of sale. Accordingly, these costs have been allocated in proportion to volume of gas purchased by each customer." Contrary to petitioner's contentions (Pet. 4), the Commission's use of the peak day of the system as the basis of allocating the capacity costs was appropriate in the circumstances (R. I, 79; R. II, 761). Moreover, the Commission used "the coincident demands" of all customers on that day (R. I, 82) and thus recognized the service priority of the domestic consumers. As the record shows, this resulted in an increased allocation of costs to the interstate sales which are subject to the Act, and a proportionately lower rate reduction for such sales (R. II, 735). Accordingly, the allocation made by the Commission was, as the lower court

observed, "a working one suitably adapted to the particular circumstances" (R. II, 1113).

3. The petitioner does not discuss the "impact" or "end result" of the Commission's order, and by its argument (Br. 22–44) impliedly concedes that the rate reduction prescribed by the Commission meets this standard. In any event, the financial history of petitioner would not sustain an argument that the Commission's rate order is not "just and reasonable."

Petitioner was organized, financed, and controlled by the Henry L. Doherty—Cities Service interests (R. III, Test. Smith, 4–10). Petitioner has no bonds, mortgage debt or preferred stock, and its 50,000 shares no par common stock are stated on its books at $1,501,000 (R. III. Test. Smith, 7). This amount represents the $1,000 paid in cash for 10 shares of such stock in 1925 and the recorded value ($1,500,000) of a stock dividend of 45,000 shares issued to a subsidiary of Cities Service, Public Service Company of Colorado, in 1931 (R. III, Test. Smith, 7–8). The book value assigned to the stock dividend was made up of $1,139,075.67 of construction funds which Cities Service had advanced to petitioner and $360,924.33 derived from petitioner's operating profits (R. III, Test. Smith,). In addition to the stock dividend, petitioner paid cash dividends which, by the end of the test year, 1939,

totalled $1,445,000 (R. III, Ex. 202, p. 8). It also accumulated by that date a depreciation reserve of $486,405.67 and an undistributed surplus of $23,076.48 (R. III, Ex. 204, p. 2).

As a result of the Commission's order in the consolidated proceedings reducing the rates of Colorado Interstate Gas Company, there will be an annual reduction of $98,000 in the cost of purchased gas to petitioner. The $119,000 reduction in petitioner's rates, ordered by the Commission and here under review, will accordingly reduce petitioner's net revenues to the extent of only $21,000.[1] The Commission's order permits petitioner to earn not less than $132,553 per year from its utility operations. In addition, petitioner has loaned $98,000 to its parent, Public Service Company of Colorado, from which it receives interest of $5,900 per year. The income available for dividends on petitioner's common stock, therefore, will amount to at least $138,453 after giving effect to the rate reduction ordered by the Commission. This is the equivalent of a return of 9.08% on petitioner's combined capital stock and surplus at the end of the test year. In these circumstances, there can be no complaint that the Commission's rate order is not "just and reasonable". See

[1] The net reduction of $21,000 is further decreased by the income tax saving, which at the 1939 rate of 16½% would be $3,465.00 and at the 1942 rate of 40% would be $8,400.

Federal Power Commission v. *Natural Gas Pipeline Company*, 315 U. S. 575, 578–579, and *Federal Power Commission* v. *Hope Natural Gas Company*, 320 U. S. 591, 603–606.

In this connection, certain other contentions which petitioner advances may be dealt with briefly. The $83,000 of inter-company "engineering" fees (Br. 47) was questioned by the staff in accordance with the Commisson's established rule of "no profits to affiliates" and, as the record shows, the Commission made an ample allowance for engineering services and expenses (R. III, Ex. 199, p. 84). Petitioner's objections to the Commission's refusal to make a separate allowance for "going concern value" are also without merit. *Federal Power Commission* v. *Natural Gas Pipeline Company*, 315 U. S. 575, 589. Finally, contrary to petitioner's contentions (Pet. 3–4), the Commission's findings with respect to accrued depreciation were fully supported by substantial evidence (R. I, 462–531; R. II, 556–562).[5]

[5] In respect of the "due process" contentions advanced by the petitioner (Pet. 4, 6, 7, Br. 65–71), that the Commission and the court below "scrambled" this case with those of the Canadian and Colorado companies, it is sufficient to observe that petitioner was given a full hearing before the Commission which, in its opinion, dealt separately with the issues raised by petitioner (R. I, 52, 59, 68, 74–75, 82–84) and entered an individual order with respect to petitioner's rates (R. I, 94–97). Moreover, the court below heard this case upon a separate record and briefs, and entered a separate decree.

CONCLUSION

The decision below is correct and there is no conflict. We respectfully submit that the petition for a writ of certiorari should be denied.

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OCTOBER 1944.

APPENDIX

The pertinent provisions of the Natural Gas Act of 1938, c. 556, 52 Stat. 821 (15 U. S. C. 717 *et seq.*), are as follows:

> SEC. 1. (b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.
>
> SEC. 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix

the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural-gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

SEC. 6. (a) The Commission may investigate and ascertain the actual legitimate cost of the property of every natural-gas company, the depreciation therein, and when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property.

SEC. 7. (a) Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided,* That the Commission shall have no authority to compel the enlargement of

transportation facilities for such purposes, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers.

(b) No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

SEC. 9. (a) The Commission may, after hearing, require natural-gas companies to carry proper and adequate depreciation and amortization accounts in accordance with such rules, regulations, and forms of account as the Commission may prescribe. The Commission may from time to time ascertain and determine, and by order fix, the proper and adequate rates of depreciation and amortization of the several classes of property of each natural-gas company used or useful in the production, transportation, or sale of natural gas. Each natural-gas company shall conform its depreciation and amortization accounts to the rates so ascertained, determined, and fixed. No natural-gas company subject to the jurisdiction of the Commission shall charge to operating expenses any depreciation or amortization charges on classes of property other than those prescribed by the Commission, or charge with

respect to any class of property a percentage of depreciation or amortization other than that prescribed therefor by the Commission. No such natural-gas company shall in any case include in any form under its operating or other expenses any depreciation, amortization, or other charge or expenditure included elsewhere as a depreciation or amortization charge or otherwise under its operating or other expenses. Nothing in this section shall limit the power of a State commission to determine in the exercise of its jurisdiction, with respect to any natural-gas company, the percentage rates of depreciation or amortization to be allowed, as to any class of property of such natural-gas company, or the composite depreciation or amortization rate, for the purpose of determining rates or charges.

SEC. 19. (b) Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. * * *. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable

ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. * * *. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

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628285—45——1

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 575

COLORADO-WYOMING GAS COMPANY, A CORPORATION, PETITIONER,

v.

FEDERAL POWER COMMISSION; COLORADO INTERSTATE GAS COMPANY, A CORPORATION; CITY AND COUNTY OF DENVER, COLORADO; PUBLIC SERVICE COMMISSION OF WYOMING; PUBLIC SERVICE COMPANY OF COLORADO; AND CANADIAN RIVER GAS COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE FEDERAL POWER COMMISSION AND PUBLIC SERVICE COMMISSION OF WYOMING

OPINIONS BELOW

The opinion and orders of the Federal Power Commission (R. I, 45–97) are reported in 43 P. U. R. (N. S.) 205. The opinion of the circuit court of appeals (R. II, 1092–1120) is reported in 142 F. (2d) 943.

JURISDICTION

The judgment of the circuit court of appeals was entered on July 8, 1944 (R. II, 1120). A petition for rehearing (R. II, 1123–1160) was denied on August 9, 1944 (R. II, 1161). The petition for a writ of certiorari was filed on October 10, 1944. A writ of certiorari was granted on November 13, 1944, limited to Question No. 7 presented in the petition. Jurisdiction of this Court rests upon Section 19 (b) of the Natural Gas Act, and Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The question as to which a writ of certiorari was granted, as stated in the petition, is as follows:

> 7. The opinion and order of the Commission approved by the Court of Appeals, under the subject title of "Allocation of Cost of Service," is predicated upon the following assumptions and conclusions, to-wit:
>
> (1) It is assumed that the property of this petitioner and the properties of Colorado Interstate Gas Company and Canadian River Gas Company, admittedly separate and independent for all other purposes in all respects, including rate making, nevertheless properly may be "integrated" as a single system for purposes of allocation required in this case (R. V. 1, p. 79).

(2) The Commission "Allocation of Costs," approved by the Court of Appeals, is not based in whole or in part upon the peak-day deliveries or other operations of this petitioner, but is predicated upon the peak-day deliveries and operations of Colorado Interstate Gas Company (R. V. 3, Ex. 226, Table 2, Line 28, Cols. 7, 8, 9; R. V. 1, pp. 186, 358; R. V. 2, pp. 728–732, 561–562).

(3) The inaccuracy manifest in the record as to the asserted factual basis adopted by the Commission for its conclusions of "allocation of cost of service" is ignored by both the Commission and the Court of Appeals. Such alleged basic facts are grossly inaccurate, and admittedly merely averages, estimates and guesses (R. V. 2, pp. 728–732, 735–744, 746–748, 751–754, 756–758, 762, 764–765).

(4) The Commission "Allocation of Cost of Service," approved by the Court of Appeals, *admittedly does not involve and is not predicated upon any allocation of property whatever* as between property and operations subject to the rate-regulatory authority of the Commission in this case and property and operations not subject to that authority in this case, nor does it give consideration to the *actual* operating conditions of petitioner's system including priority of domestic service over industrial service of gas (R. V. 1, p. 80; R. V. 2, pp. 561–562, 730–731, 786–789).

(5) It is assumed by the Commission "All that can be accomplished by an allocation of physical properties can be attained by allocating costs including the return" (R. V. 1, p. 80) and adopted by the Court of Appeals in the following language: "The Commission further stated that it did not follow from that obligation (i. e., "allocation of the property used in regulated business from that used in unregulated business") that an allocation of physical property or portions thereof must be made before any excessive returns were determined. * * * The separation or allocation may be effected by application of any formula which makes the principle a working one suitably adapted to the particular circumstances" (R. V. 2, pp. 1112–1113).

The question presented then is: Whether the allocation of cost of service, so-called, adopted in this case is without support in the record and contrary to law.

STATUTE INVOLVED

The applicable portions of the Natural Gas Act are set forth in Appendix A, *infra*.

STATEMENT

The order here under review, reducing the interstate wholesale rates of petitioner, Colorado-Wyoming Gas Company, was entered in a consolidated proceeding which also involved the interstate wholesale rates of Colorado Interstate Gas Company ("Colorado Company"), from which

petitioner purchases approximately 98% of its gas requirements (R. I, 94),[1] and the interstate wholesale rates of Canadian River Gas Company ("Canadian Company"), from which Colorado Company, in turn, obtains such gas. The gas purchased by petitioner from the Colorado Company originates in the Panhandle field in Texas and flows, through the interconnected pipe line of the Canadian Company and Colorado Company, from Texas, through New Mexico, to a point near Littleton, Colorado. There the gas flows without interruption into the main pipe line of petitioner which runs approximately 114 miles to Cheyenne, Wyoming, where petitioner sells for resale to the Cheyenne Light, Fuel and Power Company. Petitioner's facilities also include compressor stations and a number of laterals through which sales are made in Colorado for resale. Sales are also made directly to industrial consumers in Colorado and, in small quantities, to two United States Army posts. (R. I, 47–50, 94.)

On January 9, 1939, the Public Service Commission of Wyoming filed a complaint against Colorado Company, Canadian Company, and petitioner, alleging that the rates charged by petitioner for gas sold to its affiliate, Cheyenne Light,

[1] Petitioner obtains some 2% of its gas from a local source in Colorado, but this is, in substance, an exchange arrangement as to which the Commission assumed that costs equal revenues (R. I, 83).

Fuel and Power Company, for resale in Cheyenne, Wyoming, were unjust, unreasonable, and unduly discriminatory (R. I, 29–31). A similar complaint against Colorado Company and Canadian Company had been filed by the City and County of Denver, Colorado, on December 22, 1938, in respect of the rates charged by Colorado Company for gas sold to Public Service Company of Colorado for resale in Denver (R. I, 42). The Federal Power Commission, on March 14, 1939, instituted an investigation, on its own motion, of all the interstate wholesale rates of Colorado Company, Canadian Company, and petitioner (R. I, 38–41).

The investigation and hearings on the complaints were consolidated by the Commission, and hearings were begun on October 28, 1940, and held on 102 days (R. I, 46). After submission of briefs, the Commission, on March 18, 1942, issued its opinion and orders finding that the interstate wholesale rates of Canadian Company, Colorado Company, and petitioner were excessive (R. I, 45–97). The first order required Canadian Company to reduce its rates by $561,000 per year (R. I, 87–90). The second order required Colorado Company to reduce its interstate wholesale rates by $2,065,000 per year, which amount was represented in part by the ordered reduction in Canadian Company's rates to Colorado Company (R.

I, 90–94).[2] In promulgating the third order, the one here under review, the Commission found that petitioner's revenues were $159,000 in excess of costs and a fair return, and that $119,000 of such excess was allocable to petitioner's sales for resale. Petitioner was accordingly directed to reduce its wholesale rates by $119,000 (R. I, 94–97). Since the Commission had ordered Colorado Company to reduce its rates to petitioner by $98,000 per year, the net decrease in the revenues of petitioner will not exceed $21,000 (R. I, 83).

In requiring petitioner to reduce its interstate wholesale rates by $119,000 annually, the Commission found the actual legitimate cost of petitioner's plant on December 31, 1939, to be $1,678,878 (R. I, 95). From this amount the Commission deducted $395,944 for accrued depreciation and $12,183 for contributions in aid of construction; it added $16,235 for working capital and $78,813 covering gross plant additions to December 31, 1941. This resulted in a rate base of $1,365,799 which was rounded to $1,366,000. (R. I, 95.)

The Commission allowed a 6½% return on petitioner's rate base, which return it found to be "fair and reasonable" (R. I, 95). It adjusted petitioner's cost of purchased gas to reflect the $98,000 annual reduction in Colorado Company's rates

[2] These orders are now under review in Nos. 379 and 380, this Term.

to petitioner, and, with certain minor exceptions, allowed all necessary operating expenses, including taxes, shown by petitioner's books for the test year 1939 (R. I, 95). The Commission also allowed an amount to amortize rate case expenses over a five-year period (R. I, 95).

In arriving at the amount of the reduction in petitioner's interstate wholesale rates, the Commission made an allocation of petitioner's cost of service including in such cost the fair return on the rate base, and determined the excess of revenues over costs for direct sales and for interstate sales for resale (R. I, 82–85, 96).

The petitioner's application for a rehearing and stay of the Commission's order (R. I, 97) was denied by supplemental opinion and order of May 13, 1942 (R. I, 98–103). On review the court below affirmed the Commission's order (R. II, 1092–1120).

SUMMARY OF ARGUMENT

In determining the amount of the reduction in petitioner's interstate wholesale rates, the Commission made an appropriate allocation of the cost of service between petitioner's regulable and nonregulable sales. The Commission was not required, under the Constitution, the Act or the prior decisions of this Court, to take the preliminary step of first allocating the physical properties. Use of the established "commodity-demand" method of allocation represented a reasonable exercise of the

Commission's administrative discretion in the circumstances.

ARGUMENT

In objecting to the Commission's allocation of cost of service between its regulable and non-regulable sales, petitioner contends that the Commission was required "as a matter of law" to make an allocation of its physical properties (Pet. Br. 30–34) and that the allocation which the Commission made is not supported by and is contrary to the evidence (Pet. Br. 13, 34–45).[3] We submit

[3] Petitioner again advances the contention (Pet. Br. 24) that while its sales of natural gas at the "city gate" of Cheyenne, Wyoming, for resale in that city, are subject to the Commission's jurisdiction under the Act, its sales at various "city gates" in the State of Colorado are not "in interstate commerce" and are therefore beyond the Commission's jurisdiction. In granting certiorari in this case, this Court did not grant review of this question, which was Question No. 1 in the petition (p. 2). In any event, as pointed out in our brief in opposition (pp. 7–8), under the decision of this Court in *Illinois Natural Gas Company* v. *Central Illinois Public Service Company*, 314 U. S. 498, 508, it is clear that in transporting Texas gas from Littleton, Colorado, and selling it at various "city gates" in Colorado for resale, petitioner "engages in interstate commerce in gas and in its interstate transportation" within the meaning of the Natural Gas Act. In the *Illinois* case, the company's facilities were located wholly within the State of Illinois and it there purchased gas which had been brought into the state from Texas and Oklahoma. The company transported such gas to various "city gates" in Illinois, where it was sold to distributing companies for resale. Here, as in that case, petitioner "makes the first sale to distributors for resale to which the Act in terms applies."

that the Act vests the Commission with administrative discretion in the matter of allocation and that since the Commission's allocation of cost of service was supported by substantial evidence and was "a working one suitably adapted to the particular circumstances", it was properly affirmed by the court below (R. II, 1113).

I

THE COMMISSION HAS ADMINISTRATIVE DISCRETION TO ADOPT ANY METHOD OF ALLOCATION WHICH IS REASONABLE AND APPROPRIATE

The Natural Gas Act does not prescribe any method of allocation.[4] Congress thus left the matter of allocation to the expert judgment of the Commission, subject to judicial review in the event of an abuse of its administrative discretion in this regard.

The sole purpose of an allocation between the regulable and non-regulable sales of a natural-gas company is to aid the Commission in its determination of the reasonableness of the return which the company is receiving from its regulated sales and to enable the court on review to determine whether a prescribed reduction in such rates violates any constitutional standards. In reviewing such orders this Court has not undertaken to prescribe any particular formula or method of

[4] Nor does the Act by its terms require that a formal allocation of any kind be made. This question is discussed in greater detail in our brief in No. 296, this Term.

allocation. As Mr. Justice Brandeis, for the Court, observed in *Groesbeck* v. *Duluth, S. S. & A. Ry. Co.*, 250 U. S. 607, 614, "it is much easier to reject formulas presented as being misleading than to find one apparently adequate." He also noted (at p. 615) that the determination of the formula to be adopted in a particular case "presents a question, not of law, but of fact," and as Mr. Justice Douglas, for the Court, said in the recent case of *Butler Brothers* v. *McColgan*, 315 U. S. 501, 507, "one who attacks a formula of apportionment carries a distinct burden of showing by 'clear and cogent evidence' that it results in extraterritorial values being taxed."

The decisions of this Court in the *Minnesota Rate Cases*, 230 U. S. 352, and in *Smith* v. *Illinois Bell Telephone Company*, 282 U. S. 133, do not support petitioner's contention that the Commission, as a matter of law, had to make an allocation of its physical properties (Pet. Br. 30). In those cases, State agencies were undertaking to regulate the intrastate rates of utilities which were also engaged in interstate operations, the latter being constitutionally immune from State regulation. The regulation of the interstate wholesale rates of natural gas companies under the Natural Gas Act does not present such a constitutional problem, since Congress, if it so desired, could regulate the intrastate rates of such companies which "affect" their interstate rates and operations. In any event, an allocation of

properties is merely a step in the determination of the costs (including return) properly allocable to the several classes of service of a company. As the Commission here observed, "all that can be accomplished by an allocation of physical properties can be attained by allocating costs including return." (R. I, 80). It is thus apparent that the Commission is not precluded by the Constitution, the Act or the prior decisions of this Court, from making a proper allocation of costs, including return, without first taking the preliminary step of allocating the physical property.

II

THE COMMISSION'S ALLOCATION OF COST OF SERVICE WAS REASONABLE AND APPROPRIATE

In arriving at the amount of the ordered reduction in petitioner's interstate wholesale rates, the Commission made an allocation of the cost of service, including in such cost the fair return on the rate base, and separately determined the excess of revenues over costs for direct industrial sales and sales for resale (R. I, 79–84). In making such allocation of costs, the Commission adopted the so-called "demand and commodity" method,[5] which had been presented by its staff witness Lyon, a gas engineer of wide experience

[5] See *Arkansas-Louisiana Gas Company* v. *City of Texarkana*, 17 F. Supp. 447, affirmed, 96 F. (2d) 179 (C. C. A. 8), certiorari denied, 305 U. S. 606.

(R. II, 711–716, 721–727; R. III, Exh. 227). We submit that the Commission's action in this regard was an appropriate and reasonable exercise of its administrative discretion in the circumstances.

The amount of gas revenues which petitioner derived from each of its customers was definitely known and undisputed. Accordingly, the only problem involved in a determination of the reasonableness of petitioner's interstate wholesale rates was to arrive at the portion of petitioner's operating expenses, including depreciation and taxes, which was properly allocable to the interstate-wholesale customers. In order to determine the amount of excess revenues being derived from the interstate-wholesale customers, it was only necessary to add a fair return of 6½% to the amount of expenses allocated to them, and deduct the sum from the total revenues derived from them. The Commission ordered petitioner to reduce its rates to such customers accordingly (R. I, 83, 96).[8]

[8] Although the Commission ordered a reduction in petitioner's interstate wholesale rates by $119,000 per year (R. I, 96), the net cost of such rate reduction to petitioner was $21,000, inasmuch as the $119,000 reflected an ordered reduction of $98,000 per annum in petitioner's cost of gas purchased from Colorado Company (R. I, 83). The Commission's order reducing the rates charged by Colorado Company to petitioner is now under review in No. 379, this Term.

The allocation of cost of service, including return, presented by the staff engineer and adopted by the Commission may be briefly summarized.

The total cost of service included all costs allowed by the Commission, i. e., all operating expenses, taxes, depreciation and a return of 6½% on the rate base.[7] Such total cost was separated into three classes, namely, "volumetric", "capacity" and "distribution" costs (R. III, Ex. 227; R. I, 80).[8] Petitioner's volumetric costs were allocated to the customers on an annual Mcf basis, i. e., in the ratio that the sales to each customer in the test year, 1939, bore to the total sales to all customers in that year. Petitioner's capacity costs were allocated to the customers in the ratio that the Mcf sales to each customer on the peak day of Febru-

[7] The total cost of service found by the Commission was $670,000, or $70,500 per year more than that used by Commission witness Lyon (R. I, 83; R. III, Ex. 227). This increase consisted of additional allowances made by the Commission over those used by the Commission engineer, viz: (1) cost of gas purchased by petitioner from Colorado Company, $41,700, (2) rate case expense, $17,500, (3) depreciation, $300, and (4) return on rate base $11,000. (These adjustments are tabulated in Sch. 1 of Appendix B, *infra*.)

[8] The Commission characterized the "volumetric" or "commodity" costs as "variable costs * * * that vary proportionally to output or volume of sale". It characterized the "capacity" or "demand" costs as "fixed costs * * * which do not vary with volume of sales". (R. I, 80).

ary 9, 1939, bore to the total sales to all customers on that day (R. I, 80, 82–83).[2] The distribution costs consist of two general classes: (1) depreciation, taxes, maintenance and return on investment, in metering and regulating equipment through which gas is delivered at individual stations to each customer, and (2) operating and general expenses incurred in operation of such metering and regulating stations. The first group of costs was allocated to each customer in the ratio which the investment for each customer bore to the total investment in such facilities to serve all customers. The second group was allocated on the basis of the number of stations (R. III, Ex. 227, Table 7).

The transmission costs of petitioner ($245,209) were separated between volumetric costs ($75,693) and capacity costs ($169,516). See Sch. 2 and 4 of Appendix B, *infra*.) Briefly stated, all transmission costs were classified as capacity costs with the exception of compressing station fuel, supplies and expenses, maintenance and annual depreciation of compressing station equipment, costs which were classed as volumetric. Moreover, the annual return and income taxes on the transmission plant, as well as compressing station

[2] As stated in the Commission's opinion (R. I, 82–83), this was a deviation from the method of the Commission engineer, who had allocated the capacity costs to resale domestic and commercial gas as one class, and industrial gas, both direct and resale, as a separate class (R. III, Ex. 227; R. II, 748–749).

operating labor, were considered 50% volumetric and 50% capacity costs (R. III, Ex. 227, Table 6. See also Sch. 4 of Appendix B, *infra*).

It is thus clear that, contrary to petitioner's contention (Pet. Br. 27), the Commission did not combine petitioner's costs with those of Canadian Company and Colorado Company, but treated petitioner's system as a separate unit.

The record also does not support petitioner's contention that the entire capacity of the system is required to satisfy the peak-day demands of domestic consumers (Pet. Br. 18, 35-36). Instead, the evidence shows that petitioner's system has a capacity substantially in excess of that required to meet the demands of domestic consumers. Petitioner's deliveries on December 13, 1940, the highest peak day of record, totaled 14,026 Mcf. (at 14.65 lbs. pressure), of which 10,098 Mcf or 72% was sold to resale customers and 3,928 Mcf or 28% to direct industrial customers (R. I, 187; see Pet. Br. Appendix D, pp. 27-a–28-a). Since a portion of the resale gas is also sold for industrial use, it is evident that on the highest peak day in petitioner's history more than 28% of the system capacity was used by industrial customers.[19] In the light of these facts, petitioner

[19] Moreover, petitioner's witness Hancock testified that in 1941 the system capacity would be increased to from 15,000 Mcf to 21,200 Mcf per day by the installation of an additional compressor unit at the Arapahoe station (R. I, 143–144), the cost of which was included by the Commission in the rate base (R. I, 67).

is not in a position to complain, since the Commission allocated only 16.5% of the capacity costs to its direct (non-regulable) sales.

This is also true of petitioner's objection (Pet. Br. 18–19, 36) to the Commission's allocation of the capacity costs on the basis of deliveries to customers on February 9, 1939. The demands of the domestic and commercial consumers were higher on that day than on any other in the test year 1939 (R. II, 750–751, 760–761). As indicated in petitioner's brief (Appendix D, p. 28–a), there were two other days in 1939 on which petitioner's total deliveries were greater than on February 9. However, it is the *ratio* of deliveries to the regulable and non-regulable customers, rather than the total deliveries, that determines the allocation of capacity costs.[11] Significantly, petitioner does not state to what extent, if at all, it was prejudiced by the Commission's use of the ratio of the deliveries on February 9, 1939, nor does the record disclose the ratio of deliveries between the classes of cus-

[11] Commission engineer Lyon testified "* * * we are determining a percentage of distribution of capacity of the two classes of service." (R. II, 760.) On February 9, 1939, the deliveries to petitioner's resale customers amounted to 83.5% of the total deliveries, and to the direct-sale customers 16.5%. Accordingly, the capacity costs were allocated in the same ratio (R. I, 82–83; Appendix B, Sch. 2, *infra*). Deliveries to direct-sale and resale customers on February 9, 1939, are incorrectly shown in petitioner's brief as 522 Mcf and 11,034 Mcf, respectively (Pet. Br. Appendix D, p. 27–a). The record shows that the deliveries to such customers on that day were 1,777 Mcf and 9,009 Mcf, respectively (R. III, Exh. 227, Table 2).

tomers on any other day in the test year. Presumably, petitioner would have presented such evidence had it been to its advantage to do so. Finally, it was appropriate to use the peak day in 1939 rather than any of petitioner's suggested peak days in 1938 or 1940 for purposes of allocating costs incurred in the test year 1939 (Pet. Br. Appendix D, pp. 27–a, 28–a).

Petitioner further contends (Pet. Br. 19–20, 36) that the Commission did not allocate the capacity costs in proportion to the actual sales for resale and direct sales of 83.5% and 16.5%, respectively, of the peak deliveries. In fact, as stated in the Commission's opinion (R. I, 82–83), the "coincident demands of all customers on the peak day" were used. Accordingly, precisely 83.5% of the capacity costs were allocated to the sales for resale and 16.5% to the direct sales (see Appendix B, *infra,* Schedule 2, Cols. 3 and 6).

There is likewise no merit to petitioner's contention that the Commission's allocation consisted of "guesses, estimates and purported averages" (Pet. Br. 36). These allegations apparently are directed against the breakdown made by the Commission's engineer of total resale deliveries into estimated domestic and commercial sales on the one hand and industrial sales on the other (Pet. Br. 21). These estimates were not refuted by any evidence. Moreover, they were not used by the Commission, since its allocation was made between resale customers as a class and the direct-sale customers as another class (R. I, 82–83;

Appendix B, Schedule 2, Cols. 3 and 6, *infra*). And the Commission did not fix rates separately for resale domestic, commercial and industrial gas, but ordered a reduction in petitioner's interstate wholesale rates in the aggregate amount of $119,000 (R. I, 96). The further step of prescribing specific rate schedules is yet to be taken. See *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, 584–585.

Petitioner's contention respecting the Commission's treatment of the peak-day deliveries to Colorado Portland Cement Company, a direct sale customer, is without substance (Pet. Br. 20–21, 36–37). As stated in the Commission's opinion (R. I, 82), the Cement Company is regularly curtailed on peak days, and since its demand was zero on the peak day, it is apparent that none of the capacity costs were allocated to this customer under the Commission's method (R. I, 82; R. III, Exh. 227, Table 2, Col. 9, line 7). Surely, petitioner cannot be heard to complain that no capacity costs were allocated to this company, which is petitioner's largest direct industrial customer, purchasing 30% of petitioner's gas.

Petitioner urges that the Commission's segregation of costs as between "volumetric" and "capacity" costs was purely "arbitrary" and "fortuitous" (Pet. Br. 21–23, 37). The fact remains that the problem of apportioning costs between "volumetric" and "capacity" calls for the exercise of expert judgment. The Commission's segregation of such costs was supported by the evidence pre-

sented by its engineer and has a rational basis (R. II, 744; R. III, Exh. 227, Table 6). The reasonableness of the Commission's method, as tested by the end result, is apparent from the fact that only 30.9% of the total cost of service (including annual return) was allocated to the direct-sale customers (non-regulable) which purchased 48.7% of petitioner's gas in the test year. This resulted in a cost of service for the direct-sale gas of 14.9¢ per Mcf as compared with 31.5¢ per Mcf for the resale gas (see Schedule 2 of Appendix B, *infra*).

Finally, petitioner states that the Commission failed to make appropriate findings with respect to its allocation (Pet. Br. 41–43). As appears from its Opinion (R. I, 79–83), the Commission adopted the method presented by its staff engineer "with the modification that the coincident demands of all customers on the system peak day are used, and with [the] exception of deliveries to Highway Gas Company" (R. I, 82–83).[12] Starting with its revised and total cost of service, the application of the staff's allocation, as thus modified, to such total cost of service was merely a mathematical calculation (see Appendix B, *infra*).

We accordingly submit that the allocation made by the Commission is based upon competent evi-

[12] With respect to Highway Gas Company, the Commission stated (R. I, 83) that the deliveries to that company "are for all practical purposes an exchange of gas with Goodstein Pipeline Company. The total amount of revenue involved is less than $700 per year. In view of these facts no attempt was made to make a special cost study and costs have been assumed to equal revenues."

dence and has a rational basis. Neither the Act nor the Constitution requires more.

CONCLUSION

For the reasons stated, it is respectfully submitted that the decision below should be affirmed.

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JANUARY 1945

APPENDIX A

The pertinent provisions of the Natural Gas Act of 1938, c. 556, 52 Stat. 821 (15 U. S. C. § 717 *et seq.*) are as follows:

SECTION 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to Senate Resolution 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

SEC. 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, munici-

pality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

SEC. 19. (b) Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition

praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shal file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order.

The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

U. S. GOVERNMENT PRINTING OFFICE : 1945

APPENDIX B

SCHEDULE 1

Colorado-Wyoming Gas Company

Total Cost of Service as Adjusted by the Commission

Line	Description (1)	Staff Ex. 227 (2)	Commission Adjustments (3)	Adjusted (4)
1	Gas Purchased for Resale	$358,385	$41,718	$400,103
2	Operating Expenses			
3	Transmission)			
4	Distribution)	$ 41,091		$ 41,091
5	Administrative and General	26,773	17,500 1/	44,273
6	Total	$ 67,864	$17,500	$ 85,364
7	Depreciation			
8	Transmission	$ 35,364	$ 314	$ 35,678
9	Distribution	1,501		1,501
10	General	1,101		1,101
11	Total	$ 37,966	$ 314	$ 38,280
12	Taxes	$ 57,106	-	$ 57,106
13	Return on Plant in Service			
14	Transmission	$ 74,905	$10,189	$ 85,094
15	Distribution	2,093	142	2,235
16	General	380	26	406
17	Total	$ 77,378	$10,357	$ 87,735
18	Return on Working Capital	$ 454	$ 601	$ 1,055
19	Total Cost of Service	$599,153	$70,490	$669,643

1/ Additional administrative and general expense (rate case expense) was allocated to transmission and distribution on basis of direct expense as follows:

	Base	%	Allocation
Transmission	$32,146	78.23	$13,690
Distribution	8,945	21.77	3,810
	$41,091	100.00	$17,500

APPENDIX B.

SCHEDULE 2
COLORADO-WYOMING GAS COMPANY
ALLOCATED COST OF SERVICE AS ADJUSTED BY THE COMMISSION

Line No.	Description	Total Annual Volumes (Mcf)1/	Peak Day Volumes (Mcf)1/	Cost of Gas Purchased For Sale	Transmission Costs: Volumetric Costs	Transmission Costs: Capacity Costs	Transmission Costs: Total	Distribution Costs	Total Costs	Total Cost As Rounded Out by the Commission	Total Cost per Mcf	Revenue As Rounded Out by the Commission	Excess of Revenue Over Cost
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1	Direct Sales												
2	Sales to Industrial Customers	1,366,728	1,784	$130,999	$36,212	$ 26,781	$ 62,993	$ 7,956	$201,948	$201,000	14.7¢	$236,000	$ 35,000
3	Sales to U. S. War Dept.	23,127	73	3,484	613	1,147	1,760	1,660	6,973	6,000	25.9¢	11,000	5,000
4	Total Direct Sales	1,389,855	1,777	134,483	36,825	27,928	64,753	9,616	208,921	207,000	14.9¢	247,000	40,000
5	Per Cent of Grand Total	48.7	16.5	33.6	48.7	16.5	26.4	39.6	31.2	30.9	-	29.8	25.2
6	Sales for Resale												
7	Cheyenne Light, Fuel & Power Co.	414,807	2,508	71,650	10,990	39,338	50,328	1,255	123,233	124,000	29.9¢	182,000	58,000
8	Greeley Gas & Fuel Co.	147,406	840	24,544	3,906	13,202	17,108	1,079	42,731	44,000	29.8¢	64,000	20,000
9	Highway Gas Co.	4,649	19	611	123	299	422	100	1,136	700	15.1¢	700	-
10	Public Service Co. of Colorado2/	900,114	5,647	168,872	25,849	86,746	112,595	12,272	293,742	294,000	32.7¢	335,000	41,000
11	Total Sales for Resale	1,466,976	9,008	$265,677	$38,868	$141,588	$180,456	$14,706	$460,839	$462,700	31.5¢	$581,700	$119,000
12	Per Cent of Grand Total	51.3	83.5	66.4	51.3	83.5	73.6	60.4	68.8	69.1	-	70.2	74.8
13	Grand Total	2,856,831	10,786	$400,160	$75,693	$169,516	$245,209	$24,331	$669,843	$669,700	23.4¢	$828,700	$159,000

1/ Volumes are Mcf at pressure base of 14.65 pounds per square inch absolute.

2/ Includes gas sold in test year to residential right-of-way and commercial customers directly by Colorado-Wyoming Gas Company, and now sold to Public Service Co. of Colorado for resale.

APPENDIX B

SCHEDULE 3

Colorado-Wyoming Gas Company

Cost of Gas Purchased for Sale as Adjusted by the Commission

Line	Description	Volume (Mcf) 1/	Costs Per Staff Ex. 227	Commission Adjustments 2/	As Adjusted by Commission
	(1)	(2)	(3)	(4)	(5)
1	Purchases from Colorado Interstate Gas Company				
2	Volumetric Costs	2,[illegible],763	$158,113	$17,603	$175,716
3	Capacity Costs				
4	Domestic, Commercial and Lost Gas		106,558	12,888	119,420
5	Industrial		91,155	11,006	102,161
6	Total Capacity Costs		$197,667	$23,914	$221,581
7	Distribution Costs		1,872	200	2,072 3/
8	Total Cost of Gas Purchased from Colorado Company	2,[illegible],763	$357,652	$41,717	$399,369
9	Less Gas Used in Operations	(30,893)	(4,373	-	(4,373
10	Total Cost of Gas Purchased from Colorado Company for Sale	2,853,870	$353,279	$41,717	$394,996
11	Purchases from Goodwell Pipe Line Company	47,878	4,788	-	4,788
12	Purchases from Ed Vosher	3,191	319	-	319
13	Less System Leakage and Unaccounted-for Gas	(48,108)	-	-	-
14	Total Gas Purchase for Sale	2,856,831	$358,386	$41,717	$400,103
15	Recapitulation of Cost of Gas Purchased for Sale				
16	Volumetric Costs				$176,450
17	Capacity Costs				
18	Domestic, Commercial and Lost Gas				120,537
19	Industrial				103,116
20	Total				$400,103 3/

1/ Volumes are in Mcf at pressure base of 14.65 pounds per square inch absolute.
2/ Commission adjustments were distributed on the basis used in Staff Exhibit [illegible].
3/ Allocation of cost of gas purchased for sale.

Customer	Volumetric Costs	Capacity Costs	Total Cost
Direct Sales			
Industrial customers	$ 84,116	$46,583	$130,699
U.S. War Dept.	1,628	1,996	3,624
Total	$ 85,744	$48,579	$134,323
Sales for Resale			
Cheyenne L.P.&P.Co.	$ 25,620	$46,030	$ 71,650
Greeley G.&E. Co.	9,104	15,440	24,544
Highway Gas Co.	282	327	614
Public Ser.Co.of Colo.	55,595	113,277	168,872
Total	$ 90,606	$175,074	$265,680
Grand Total	$176,450	$223,653	$400,103

APPENDIX B

SCHEDULE 4

COLORADO-WYOMING GAS COMPANY

TRANSMISSION AND DISTRIBUTION COSTS AS ADJUSTED BY THE COMMISSION

Line	Description (1)	Transmission Costs: Total Costs (2)	Volumetric Costs (3)	Capacity Costs (4)
1	Total Cost as per Staff Exhibit #227 - Table No. 6	$220,520	$70,599	$149,921
2	Commission Adjustments as Allocated			
3	Proportion of General Expenses	13,690		13,690
4	Annual Accruals for Depreciation of Transmission Plant	314		314
5	Return on Transmission Plant	10,189	5,094	5,095
6	Proportion of Return on General and Intangible Plant	26		26
7	Return on Working Capital	470		470
8	Adjusted Transmission Costs	$245,209	$75,693	$169,516

Line	Description (1)	Distribution Costs: Total Costs (2)	Allocated Equally Per Customer (3)	Allocated on Basis of Adjusted Book Cost of Plant (4)
1	Total Cost as per Staff Exhibit #227 - Table No. 7	$ 20,248	$13,624	$ 6,624
2	Commission Adjustments as Allocated			
3	Proportion of General Expenses	3,810	3,508	302
4	Return on Distribution Plant	142		142
5	Return on Working Capital	131		131
6	Adjusted Distribution Costs	$ 24,331	$17,132	$ 7,199

SUPREME COURT OF THE UNITED STATES.

No. 575.—October Term, 1944.

Colorado-Wyoming Gas Company, Petitioner, *vs.* Federal Power Commission, Colorado Interstate Gas Company, City & County of Denver, Colorado, et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

[April 2, 1945.]

Mr. Justice Douglas delivered the opinion of the Court.

This case is a companion case to *Colorado Interstate Gas Co.* v. *Federal Power Commission*, No. 379, and *Canadian River Gas Co.* v. *Federal Power Commission*, No. 380, decided this day. Petitioner began operations in 1925. Until 1929 petitioner obtained its entire supply from the Wellington Field of the Continental Oil Co., near Ft. Collins, Colorado. Its transmission line ran from that point north to Cheyenne, Wyoming. The Wellington Field began to diminish. So petitioner, in October, 1929, entered into a twenty-year contract with Colorado Interstate to purchase gas from it, the gas to be delivered to petitioner at its metering station near Littleton, Colorado. Accordingly, in 1929 and 1930 petitioner constructed a pipe line between Ft. Collins, Colorado and Littleton, Colorado, where connection was made with Colorado Interstate's transmission system. Between 1929 and 1939 branch lines were constructed to serve various cities, towns, and industrial customers in Colorado. At the present time all but two per cent of its gas is obtained from Colorado Interstate. Petitioner sells gas at the Cheyenne city gate to its affiliate Cheyenne Light, Fuel and Power Co. It also sells directly to industrial consumers in Colorado and to some extent in Wyoming. And it sells gas at various city gates in Colorado for resale.

The investigation and hearings on the interstate wholesale rates of Canadian, Colorado Interstate and petitioner were consolidated. As we have seen the Commission ordered Canadian to reduce its rate by $561,000 per year. That amount made up part of the

$2,065,000 annual reduction which the Commission ordered in the rates of Colorado Interstate. In the present case the Commission found that petitioner's revenues were $159,000 in excess of costs and a fair return and that $119,000 of that excess were allocable to petitioner's sales for resale. The Commission ordered petitioner to reduce its wholesale rates by $119,000 a year (43 P. U. R. (N. S.) 205, 234). That does not represent the net decrease in revenue, since the Commission ordered Colorado Interstate to reduce its rates to petitioner by $98,000 a year. Accordingly, the net decrease in revenues of petitioner will be $21,000 if the Commission's order stands. The petition for certiorari, which we granted to review the judgment of the Circuit Court of Appeals affirming the order of the Commission (142 F. 2d 943) was limited to the question whether the allocation of cost of service used by the Commission is without support in the record and contrary to law.

The Commission in this case as in *Colorado Interstate Gas Co.* v. *Federal Power Commission* and *Canadian River Gas Co.* v. *Federal Power Commission* did not make a separation of properties used in the regulated business from those used in the unregulated. It used instead the same method of allocation of costs as it did in those other cases. Petitioner contends that the Commission's method of allocation of costs included in the regulated business a part of its business which Congress has not subjected to regulation by the Commission. As we have noted, petitioner's transmission line commences in Colorado near Littleton where it connects with the pipeline of Colorado Interstate. Petitioner sells some of its gas in Colorado for resale to domestic users in certain towns in Colorado. The Commission held that those wholesale sales were subject to its jurisdiction. Petitioner contends that those sales are made in intrastate commerce and are not subject to the Commission's rate making powers. Its position is that the one and only sale for resale by it in interstate commerce is the sale at the city gate in Cheyenne, since none of the Colorado sales involve interstate commerce so far as petitioner is concerned.

The answer turns on the meaning of § 1 (b) of the Act (52 Stat. 821, 15 U. S. C. § 717) which provides:

"(b) The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other

use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

The Commission relied on *Illinois Gas Co.* v. *Public Service Co.*, 314 U. S. 498, in concluding that it had jurisdiction over the wholesale sales in Colorado. That case presented the question whether the Illinois Commission or the Federal Power Commission had authority to authorize a pipeline extension wholly within Illinois. The company proposing the extension (Illinois Gas Co.) owned a pipeline system wholly in Illinois which was connected at various points in that State with the pipeline of its parent company, Panhandle Eastern Pipe Line Co., which owned and operated a natural gas pipeline system from gas fields in Texas, Kansas and Oklahoma across Illinois and into Indiana. The Illinois company purchased its gas under a long term contract from Panhandle Eastern and transported it through its own lines to local gas distributing utilities in Illinois to which it sold the gas for distribution to consumers in various Illinois cities. We held that the Illinois company by virtue of § 7(c) of the Act[1] could build an extension to connect with the facilities of a company distributing gas to consumers in Illinois only after obtaining a certificate of public convenience and necessity from the Federal Power Commission. We held that the Illinois company and Panhandle Eastern were engaged "in interstate commerce in the purchase and sale of the natural gas which moves in a continuous stream from points without the state" into the pipes of the Illinois company; and that "the particular point at which the title and custody of the gas pass to the purchaser; without arresting its movement to the intended destination, does not affect

[1] Sec. 7(c) provides in part:

"No natural-gas company shall undertake the construction or extension of any facilities for the transportation of natural gas to a market in which natural gas is already being served by another natural-gas company; or acquire or operate any such facilities or extensions thereof, or engage in transportation by means of any new or additional facilities, or sell natural gas in any such market, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such new construction or operation of any such facilities or extensions thereof: . . . ."

A natural-gas company is defined in § 2(6) as a "person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale."

the essential interstate nature of the business." 314 U. S. pp. 503, 504. We pointed out that the purpose of the Act was to provide "an agency for regulating the wholesale distribution to public service companies of natural gas moving interstate, which this Court had declared to be interstate commerce not subject to certain types of state regulation." *Id.*, p. 506. We reviewed the earlier decisions of the Court which adopted the mechanical test for determining when interstate commerce ends and intrastate commerce begins, viz., when the gas is introduced into the service pipes of the local distributor. We noted that it was to fit the pattern of state regulation reflected in those decisions that the Natural Gas Act was passed.

Accordingly, we conclude that if petitioner's pipeline were to be constructed today from Littleton, Colorado to the city gates of the Colorado towns where petitioner's gas is resold, § 7(c) would require that a certificate of public convenience and necessity be obtained from the Commission. For in this case as in *Illinois Gas Co.* v. *Public Service Co.*, *supra*, the gas which petitioner purchases from Colorado Interstate moves in a continuous stream across state lines to local distributing companies in Colorado as well as Wyoming. If petitioner is engaged in "the transportation of natural gas in interstate commerce" to those Colorado towns within the meaning of § 1(b), its wholesale sales in Colorado are also sales "in interstate commerce of natural gas for resale for ultimate public consumption" as those words are used in § 1(b). That commerce does not end until the gas enters the service pipes of the distributing companies.

Most of the other objections which petitioner raises to the Commission's method of allocation of costs have been considered in the cases of *Colorado Interstate Gas Co.* v. *Federal Power Commission* and *Canadian River Gas Co.* v. *Federal Power Commission*. We need not repeat what we said there. But there are a few distinct phases of this case which must be separately stated.

Petitioner says that the Commission treated it along with Canadian and Colorado Interstate as an integrated unit for purposes of the allocation of costs. The inference is that the Commission combined petitioner's costs with those of the other two companies and allocated the combined costs three ways. That is not the fact. Petitioner is independent in management and control from the other two. Its system was not constructed as part

of Canadian's and Colorado Interstate's system but was started independently and connected with the others at a later stage. The Commission recognized that in operation the three company project was a single one in the sense that an alteration in Canadian's rates affected the reasonableness of the rates of Colorado Interstate and in turn the reasonableness of the rates of petitioner. But when it came to an allocation of costs among petitioner's classes of business the Commission considered petitioner's costs alone.

Here as in the cases of Canadian and Colorado Interstate the findings of the Commission leave much to be desired. The findings are general and incorporate by reference the staff exhibits, on which reliance is put for the subsidiary findings. But in this case there are added difficulties. The staff used one system, the Commission another. As the Commission said the staff "departed from the use of the system peak day for allocating demand (fixed) costs and combined the separate class peaks of resale customers and of main line industrial customers." 43 P. U. R. (N. S.) p. 233. The Commission thought a different method would be in keeping with petitioner's operations. It said: "The Colorado Portland Cement Company, the principal main line industrial user, is curtailed regularly during system peak days. Its demand on the system peak day is, in our opinion, a proper measure of its proportionate share of demand costs than its highest off-peak demand. Accordingly, the principles and methods of cost allocation presented by Commission staff are adopted with the modification that the coincident demands of all customers on the system peak day are used, and with exception of deliveries to Highway Gas Company." 43 P. U. R. (N. S.) p. 234. When we read that finding against the record there are ambiguities which we are unable to resolve were it our province to do so.

(1) The "system peak day" is February 9, 1939—the same day chosen for Canadian and Colorado Interstate. We know from our search of the record that is not the actual peak day in 1939 for petitioner's business. We are told by the Commission in its brief that it is the ratio of deliveries to the regulable and non-regulable customers rather than total deliveries that determines the allocation of capacity costs. But there are no findings which indicate why the system peak day for other companies should be taken as the system peak day for this company. Nor are there any findings which indicate that the ratio on the system

peak day is a more reliable guide in the allocation of costs than the ratio on the actual peak day of this company.

(2) The Commission says it allocated capacity costs on the basis of the "coincident demands of all customers on the system peak day." It said that Colorado Portland Cement Co. is "curtailed regularly during system peak days" and that its "demand" on that day is the proper measure of its proportionate share of capacity costs. We assume it meant by "coincident demands" on the system peak day, the amount of gas actually delivered on that day, not the customers' respective needs for gas on that day. But when we turn to the record there are ambiguities. The staff exhibit on which the Commission apparently relied designates as one classification the "maximum day deliveries on Colorado Interstate Gas Co. peak day—Thurs., Feb. 9, 1939." Under that heading we compute 1,777 Mcf. to direct-sale customers and 9,009 Mcf. to resale customers on February 9, 1939. The Commission in its brief tells us that that was the basis on which it allocated capacity costs, viz. 83.5 per cent to the resale gas, 16.5 per cent to the direct sale gas. But there is evidence in the record that the direct-sale customers received on February 9, 1939 not 1,777 Mcf. but only 522 Mcf. If we use 522 Mcf. rather than 1,777 Mcf. in our computations we shift to the interstate wholesale sales almost $21,000 additional costs. Now the net rate decrease ordered by the Commission in this case amounted to $21,000. Hence that net decrease substantially disappears if we take 522 Mcf. rather than 1,777 Mcf. as the amount of direct sales on Feb. 9, 1939. The choice of the lower figure would thus be fatal to the Commission's case.

We do not know why the lower figure was rejected. There are no findings to guide us. In the record there is testimony which may suffice as a partial reconciliation of the difference and which casts some doubts on the accuracy of the lower figure. But we have been unable completely to reconcile the difference. We do know from a reading of the record that the staff exhibit from which the 1,777 Mcf. item was obtained was based at least in part on averages or estimates not on actual deliveries. It is not clear whether 1,777 Mcf. rested on estimates or reflected actual deliveries by petitioner on Feb. 9, 1939. The caption "maximum day deliveries on Colorado Interstate Gas Co. peak day—Thurs., Feb. 9, 1939" is ambiguous. It may mean that the gas delivered to petitioner by Colorado Interstate on that day was apportioned among the several classes of customers according to their actual

use on that day. It may mean actual deliveries by petitioner during that day. The figures may or may not be the same.

The review which Congress has provided for these rate orders is limited. Sec. 19(b) says that the "finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive." But we must first know what the "finding" is before we can give it that conclusive weight. We have repeatedly emphasized the need for clarity and completeness in the basic or essential findings on which administrative orders rest. *Florida* v. *United States*, 282 U. S. 194, 215; *United States* v. *Baltimore & Ohio R. Co.*, 293 U. S. 454, 464; *United States* v. *Chicago, M. St. P. & P. R. Co.*, 294 U. S. 499, 504-505, 510-511; *United States* v. *Carolina Carriers Corp.*, 315 U. S. 475, 488-489. Their absence can only clog the administrative function and add to the delays in rate-making. We cannot dispense with them for Congress has provided the standards for judicial review under this Act, § 19(b). The courts cannot perform the function which Congress assigned to them in absence of adequate findings. Nor are they authorized under § 19(b) to make findings and substitute them for those of the Commission.

We think it is plain that $98,000 of the rate decrease ordered by the Commission in this case is valid since it reflects the reduction in the rates of Colorado Interstate from whom petitioner purchases practically all of its gas. But the balance of the $119,000 rate decrease which was ordered, viz. $21,000, is so shrouded in doubt that further findings by the Commission are necessary.

Accordingly, we affirm the judgment below insofar as it sustained the order of the Commission directing petitioner to reduce its rates by $98,000. As to the balance of the rate reduction, we reverse the judgment below, set aside the order of the Commission, and remand the cause for further proceedings in conformity with this opinion. See § 19(b).

It is so ordered.

THE CHIEF JUSTICE, MR. JUSTICE ROBERTS, MR. JUSTICE REED, and MR. JUSTICE FRANKFURTER are of the opinion that the case should be remanded to the Commission for separate allocation of investment and operating cost between the regulable and non-regulable properties as well as for the clarification of findings directed in the opinion. They agree that the deliveries to wholesalers in Colorado are in interstate commerce.